

## PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of July 1, 2011, ("Effective Date") by and between the State of Delaware (the "State"), Office of Management and Budget ("OMB"), and Delta Dental of Delaware, Inc., a Delaware corporation, One Delta Drive, Mechanicsburg, PA 17055 ("Contractor").

WHEREAS, the State desires to obtain certain services to employees, pensioners and their dependents; and

WHEREAS, Contractor desires to provide such services to the State on the terms set forth below;

WHEREAS, the State and Contractor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, the State and Contractor agree as follows:

### 1. Services.

1.1 Contractor shall perform for the State the services specified in the Appendices to this Agreement, attached hereto and made a part hereof:

- 1.1.1 Appendix A – Scope of Work
- 1.1.2 Appendix B – Delta Dental PPO<sup>sm</sup> Dental Service Contract with Schedules and Riders for the *Delta Dental PPO Plus Premier* plan as listed in the Table of Contents
- 1.1.3 (Appendices C and D – Reserved)
- 1.1.4 Appendix E – Performance Guarantees
- 1.1.5 Appendix F – Business Associate Agreement
- 1.1.6 Appendix G – List of Reports
- 1.1.7 Appendix H – Non-Covered Services Policy

1.2 The parties agree that the election of coverage shall be a binding election for the plan year; July 1<sup>st</sup> to June 30<sup>th</sup>.

1.3 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); and (b) the State's request for proposals, dated August 31, 2011 ("RFP"). The RFP is specifically incorporated into this Agreement and made a part hereof. Notwithstanding the above, the parties hereto acknowledge that the benefits and services hereunder are provided pursuant and subject to a group master insurance policy and certificate, filed and approved by the Delaware Insurance

Department, and any conflicts or inconsistencies among the documents concerning the benefits and services shall be resolved by reference to the group master insurance policy and certificate.

1.4 Subject to such approval as may be required by the Delaware Department of Insurance, the State may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by Contractor shall be furnished without the written authorization of the State. When the State desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Contractor, who shall then submit to the State a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Contractor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.5 Contractor will not be required to make changes to its scope of work that result in Contractor's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## **2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from July 1, 2011, through June 30, 2014, as set forth in Appendix B, Schedule I, Part 1, with the State having the option for up to two (2) one-year extensions (July 1, 2014 through June 30, 2015 and July 1, 2015 through June 30, 2016) as set forth in Appendix B, Schedule I, Part 2.

2.2 Contractor accepts the lag payroll payment schedule for members' premium payments. The State will present payments to the Contractor based on payroll/pensioner premium deductions calculated by the State following the last check confirm for the fiscal payroll month. The State agrees to submit payment to the Contractor by the 21<sup>st</sup> day of the month following the month in which services may be rendered. If an employee misses a payment, no payment will be made by the State to the Contractor. Contractor agrees to accept retroactive terminations for up to sixty (60) days.

2.3 The State shall have no obligation to pay premiums or fees to the Contractor for the performance of services of this employee-pay-all benefit. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Contractor and it shall be Contractor's responsibility to ensure that hours and tasks are properly budgeted so that all Contractor's services are completed.

2.5 Any payments made by the State of Delaware will be by Automated Clearing House (ACH) as per its ACH processing procedures.

2.6 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Contractor. If an Appendix specifically provides for expense reimbursement, Contractor shall be reimbursed only for reasonable expenses incurred by Contractor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies. Receipts must be provided.

2.7 The State is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.8 The State shall subtract from any payment made to Contractor all damages, costs and expenses caused by Contractor's negligence, resulting from or arising out of errors or omissions in Contractor's work products, which have not been previously paid to Contractor.

2.9 For this employee-pay-all benefit, the State shall produce its own monthly invoice for payroll groups and retirees. Reconciliation inquiries shall be submitted to:

State of Delaware  
Office of Management and Budget  
Statewide Benefits Office  
Attn: Colleen Kondelis  
500 W. Loockerman Street, Suite 320  
Dover, DE 19904

For non-payroll groups that are invoiced by the Contractor, invoices shall be submitted to:

State of Delaware  
Office of Management and Budget  
Financial Operations  
122 William Penn Street, Suite 101  
Dover, DE 19901

### **3. Responsibilities of Contractor.**

3.1 Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Contractor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Contractor shall follow practices consistent with generally accepted professional and technical standards. Contractor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the

requirements of the RFP and the standards of the OMB. Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's failure to ensure compliance with RFP requirements and OMB standards.

3.2 It shall be the duty of the Contractor to assure that all products and services are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Contractor will not produce a work product that violates or infringes on any copyright or patent rights. Contractor shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by the State of any products or services furnished by Contractor shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of its work. The State's review, approval, acceptance, or payment for any of Contractor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's performance or failure to perform under this Agreement.

3.4 Contractor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Contractor's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

<u>Project</u>	<u>Team</u>	<u>Title</u>	<u>% of Project Involvement</u>
Carrie Schiavo	Account Mgt	Account Manager	100%

3.5 Designation of person(s) for account management is subject to review and approval by the State. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Contractor will notify the State immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff person(s) are subject to review and approval by the State. If Contractor fails to make a required replacement within 30 days, the State may terminate this Agreement for default. Upon receipt of written notice from the State that an employee of Contractor is unsuitable to the State for good cause, Contractor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 Contractor shall furnish to the State's designated representative copies of all correspondence to regulatory agencies pertaining specifically to this Agreement for review prior to mailing such correspondence.

3.7 Contractor agrees that its officers and employees will cooperate with the State in the performance of services under this Agreement and will be available for consultation with the State at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 Contractor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State or any other political subdivision of the State.

3.9 Contractor will not use the State's name, either express or implied, in any of its advertising or sales materials without the State's express written consent.

3.10 The rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.

3.11 Contractor shall provide a written report no later than forty-five (45) days following the close of each quarter which shall describe any judgment, settlement or pending litigation involving Contractor in the most recent quarter that could result in judgments or settlements in excess of One Hundred Thousand Dollars (\$100,000).

#### **4. Time Schedule.**

4.1 As an incumbent dental benefit provider to the State, the Contractor agrees to perform the implementation tasks as directed by the State for a seamless transition to the contractual term beginning July 1, 2011 (FY12). As outlined in the Performance Guarantee Appendix, Contractor agrees to abide by deadlines set by the State for the necessary communication materials of the Open Enrollment period and benefit coverage beginning July 1, 2011.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by the State.

#### **5. State Responsibilities.**

5.1 In connection with Contractor's provision of the Services, the State shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 The State agrees that its officers and employees will cooperate with Contractor in the performance of services under this Agreement and will be available for consultation with Contractor at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by Contractor under this Agreement shall be subject to review for compliance with the terms of this Agreement by the State's designated representatives. The State representatives may delegate any or all responsibilities under the Agreement to appropriate staff members. The review comments of the State's designated representatives may be reported in writing as needed to Contractor. It is understood that the State's representatives' review comments do not relieve Contractor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

## **6. Work Product.**

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Contractor for the State relating to the services to be performed hereunder shall become the property of the State and shall be delivered to the State's designated representative upon completion or termination of this Agreement, whichever comes first. Contractor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by the State. The State shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 Contractor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

## **7. Confidential Information.**

To the extent permissible under 29 *Del. C.* §10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

## **8. Warranty.**

8.1 Contractor warrants that its services will be performed in a good and workmanlike manner. Contractor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Contractor for the State in connection with the provision of the Services, Contractor shall pass through or assign to the State the rights Contractor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

**9. Indemnification.**

9.1 Contractor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Contractor, its agents or employees, or (B) Contractor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Contractor shall have been notified in writing by the State of any notice of such claim; and (ii) Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 Contractor shall indemnify and hold harmless the State of Delaware, its agents and employees, from any and all liability, suits, actions or claims, including any claims or expenses with respect to the resolution of any data security breaches/ or incidents, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Contractor, its agents or employees, or (B) Contractor's breach of this Agreement, provided as to (A) or (B) that (i) Contractor shall have been notified promptly in writing by the State of Delaware of any notice of such claim; and (ii) Contractor shall have control of the defense of any action on such claim and all negotiations for its settlement or compromise.

**10. Employees.**

10.1 Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Contractor in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor the State's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

**11. Independent Contractor.**

11.1 It is understood that in the performance of the services herein provided for, Contractor shall be, and is, an independent contractor, and is not an agent or employee of the State and shall furnish such services in its own manner and method except as required by this Agreement. Contractor shall be solely responsible for, and shall indemnify, defend and save

the State harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of the State, and that they shall not be entitled to any of the benefits or rights afforded employees of the State, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The State will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the State or any of its officers, employees or other agents.

11.3 Contractor shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, Contractor has no authority to bind or commit the State. Nothing herein shall be deemed or construed to create a joint venture, partnership, and fiduciary or agency relationship between the parties for any purpose.

## **12. Suspension.**

The State may suspend performance by Contractor under this Agreement for such period of time as the State, at its sole discretion, may prescribe by providing written notice to Contractor at least 15 days prior to the date on which the State wishes to suspend. Upon such suspension, the State shall pay Contractor its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. Contractor shall not perform further work under this Agreement after the effective date of suspension. Contractor shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from the State to resume performance.

## **13. Termination.**

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by the State for its convenience, but only after Contractor is given not less than 30 calendar days written notice of intent to terminate.



13.3 If termination for Contractor's default is effected by the State, the State will pay Contractor that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the State by reason of Contractor's default, and
- c. Upon termination for default, the State may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Contractor shall cease conducting business, the State shall have the right to make an unsolicited offer of employment to any employees of Contractor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of Contractor to fulfill contractual obligations it is determined that Contractor has not so failed, the termination shall be deemed to have been effected for the convenience of the State.

13.5 The rights and remedies of the State and Contractor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 The State may, by written notice to Contractor, terminate this Agreement if it is found after notice and hearing by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, the State shall be entitled to pursue the same remedies against Contractor it could pursue in the event of a breach of this Agreement by Contractor.

13.6.3 The rights and remedies of the State provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**14. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**15. Assignment; Subcontracts.**

15.1 Any attempt by Contractor to assign or otherwise transfer any interest in this Agreement without the prior written consent of the State shall be void. Such consent shall not be unreasonably withheld.

15.2 Services other than graphics, printing, and mailing specified by this Agreement and administrative services provided by Contractor's affiliates in the ordinary course of business, shall not be subcontracted by Contractor without prior written approval of the State.

15.3 Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under this Agreement by Contractor, its subcontractor or its sub-subcontractor provided however, that Provider Dentists and their employees, agents and assigns, are not, and shall not be construed hereunder as subcontractors or sub-subcontractors.

15.5 The compensation due shall not be affected by the State's approval of the Contractor's request to subcontract.

**16. Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

**17. Non-Appropriation of Funds.**

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated the State may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and the State's obligations under it shall be extinguished at the end of the fiscal year in which the State fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**18. State of Delaware Business License.**

Contractor and all subcontractors represent that they are properly licensed and authorized to transact business in the State as provided in 30 *Del. C.* §2502.

**19. Complete Agreement.**

19.1 This agreement and its Appendices shall constitute the entire agreement between the State and Contractor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 Contractor may not order any product requiring a purchase order prior to the State's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

## **20. Miscellaneous Provisions.**

20.1 In performance of this Agreement, Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Contractor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

20.5 Contractor acknowledges that the State has an obligation to ensure that public funds are not used to subsidize private discrimination. Contractor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the State may declare Contractor in breach of the Agreement, terminate the Agreement, and designate Contractor as non-responsible.

20.6 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 Contractor shall maintain all public records, as defined by 29 *Del. C.* §502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the State Division of Archives, pursuant to the State Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of the State may inspect or audit Contractor's performance and records pertaining to this Agreement at the Contractor business office during normal business hours.

**21. Insurance.**

21.1 Contractor shall maintain the following insurance during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, and
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. Contractor shall provide forty-five (45) days written notice of cancellation or material change of any policies.

21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.

21.4. In no event shall the State be named as an additional insured on any policy required under this agreement.

**22. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, Contractor hereby grants, conveys, sells, assigns, and transfers to the State all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

**23. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State, except where Federal Law has precedence. Contractor consents to the exclusive jurisdiction and venue of the courts of the State.

**24. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO State at:

Ms. Brenda Lakeman, Director  
State of Delaware, OMB  
Statewide Benefits  
Duncan Center, Suite 320  
500 W. Loockerman Street  
Dover, DE 19904

TO Contractor at:

Ms. Judith McCallister  
Delta Dental of Delaware, Inc.  
One Delta Drive  
Mechanicsburg, PA 17055

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE  
OFFICE OF MANAGEMENT AND  
BUDGET**

By: \_\_\_\_\_  
Brenda L. Lakeman  
Director, Statewide Benefits

**DELTA DENTAL OF DELAWARE,  
INC.**

By: \_\_\_\_\_  
Gary D. Radine  
President

Delta Dental of Delaware, Inc.

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## Appendix A - Scope of Work

1. Contractor agrees to execute a Business Associate Agreement before the effective date of this contract.
2. The reports identified in Appendix G, List of Reports, along with *ad hoc* reports, are available at no cost to the State.
3. The Parties agree that the Ten Thousand Dollars (\$10,000) implementation credit will be used by the Contractor for one or more mailings to members at Contractor's discretion. The balance of the cost of the mailings, if any, will be absorbed by the Contractor.
4. The Contractor agrees to mail Welcome Packets to members at no cost to the State.
5. The Contractor agrees to electronically retrieve from multiple State servers, paper enrollments, and files from non-payroll groups on a regular basis eligibility, enrollment, and subscriber database information as set forth in the RFP. The State acknowledges that each file feed will require a separate plan and plan identification number in the Delta Dental system.
6. No later than July 1, 2011, an employee or pensioner identification number or some other identifying number will be used instead of social security numbers on all electronic files and reporting for the State of Delaware active and pensioner groups.
7. Contractor and State agree that Article II Enrollment is superseded by the Dependent(s) definition in Article I of Appendix B.
8. Open Enrollment support shall be provided at no additional cost to the State and shall consist of, but not necessarily be limited to, annual attendance at each Benefit Representative Meeting and Health Fairs associated with Open Enrollment and meetings held throughout the year to newly formed groups (such as charter schools and non-payroll groups).
9. Contractor shall participate in Quarterly Meetings, conference calls, and *ad hoc* meetings as requested by the State.
10. Contractor will run a geo analysis and provider disruption on an annual basis to compare the prior year's information with the current year's census. If the results of the geo access and provider disruption indicate a 10% net change, the Parties reserve the right to renegotiate the rates.
11. Contractor and State agree that the term in Article X, Paragraph D, Return on Premium on Termination, is not applicable and therefore not in effect.
12. Contractor and State agree that the statement in Article XI, Extent of the Entire Contract, is superseded with:

The Contract between the parties consists of the Professional Services Agreement with Appendices, of which this printed document together with Schedules I and II and Riders are an Appendix.

## APPENDIX B

(Delta Dental PPO<sup>SM</sup> Dental Service Contract with Schedules and Riders for the  
Delta Dental PPO Plus Premier plan as listed in the Table of Contents)



# APPENDIX A

(Scope of Work)

THIS DELTA DENTAL PPO<sup>SM</sup> DENTAL SERVICE CONTRACT  
FOR EXPERIENCE RATED GROUPS  
("Contract")

effective as of

July 1, 2011

by and between

STATE OF DELAWARE

(hereafter called "State")

and

DELTA DENTAL OF DELAWARE, INC.

T/D/B/A DELTA DENTAL OF DELAWARE

Administrative offices:

One Delta Drive  
Mechanicsburg, PA 17055

a Delaware non-profit corporation (hereafter called "Delta Dental of Delaware, Inc." or  
"Contractor")

WITNESSETH THAT THE PARTIES AGREE AS FOLLOWS:

This Dental Service Contract affords national access to all Delta Dental Plans to all Members.

MC-PPO-DE-08

DELTA DENTAL OF DELAWARE, INC.

DELTA DENTAL PPO DENTAL SERVICE CONTRACT  
FOR EXPERIENCE RATED GROUPS

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## ARTICLE I. DEFINITIONS

Allowed Amount shall mean the lesser of the charged fee the Maximum Plan Allowance, or the equivalent amount as stated in the National Provider File for Participating Dentists of other Delta Dental Plans on which program deductibles, maximums and co-payments are based.

Attending Dentist Statement shall mean the written report of a series of procedures recommended for the Treatment of a specific dental disease, defect or injury, prepared for a Member by a Dentist as a result of an examination made by such Dentist.

Business Associate Addendum is a written contract between State and Contractor, as a business associate of State, that provides satisfactory assurances to State that the release, disclosure, and/or use of Protected Health Information (PHI), shall be protected and conducted with appropriate safeguards in compliance with HIPAA.

Calendar Year means the twelve-month period commencing at 12:01 a.m. January 1<sup>st</sup> of every year and terminating at 12:00 midnight on December 31<sup>st</sup>.

Continuation Coverage shall mean identical coverage for the periods indicated for Employees and eligible Dependents at their own expense as follows:

1. Eighteen (18) months for Employees and their Dependents losing coverage through (a) termination (other than for gross misconduct), or (b) reduction in work hours; extended up to twenty-nine (29) months, if disabled, as that word is defined in Titles II and XVI of the Social Security Act.
2. Thirty-six (36) months for (a) surviving spouses and their dependent children; (b) divorced or legally separated spouses and their dependent children; (c) Medicare ineligible spouses and their dependent children of current Employee entitled to Medicare or of former Employee on Continuation Coverage entitled to Medicare; (d) dependent children losing coverage under the provisions of Article I.
3. Continuation Coverage shall terminate on the happening of one of the following events, whichever is sooner:
  - (a) The applicable period for Continuation Coverage ends;
  - (b) Thirty (30) days after the date of final determination that a person on extended coverage is no longer disabled;
  - (c) Member subsequently becomes covered under another group dental plan having equivalent coverage which does not have exclusions or limitation for pre-existing conditions or becomes entitled to dental coverage from Medicare; or
  - (d) Premium for Continuation Coverage is not paid on time.

4. Eligibility for Continuation Coverage shall be determined by State. Notification of election of Continuation Coverage, changes in Continuation Coverage and termination of Continuation Coverage shall be in accordance with the procedure described in Article II, Paragraph D.
5. The provisions of Article IV, Section H concerning limitation on liability for claims on termination of the Contract, or of Members who have lost eligibility, are expressly applicable to loss of eligibility on account of termination of Continuation Coverage.

Contract Term shall mean a period commencing at 12:01 a.m. on July 1, 2011, and terminating at 12:00 midnight on June 30, 2014.

Delta Dental Participating Plan Agreement shall mean the agreement with the Delta Dental Plans Association providing national access to Contractor's multi-state dental programs involving single-site processing with payment to local Participating Dentists at the local state's Allowed Amount.

Delta Dental Plans shall mean members of the Delta Dental Plans Association.

Delta Dental Plans Association shall mean the national organization of various Delta Dental Plans.

Delta Dental PPO shall mean a dental care program for Members under which all fees paid or otherwise discharged by Contractor for Services for Services provided by a PPO Dentist shall be the PPO allowed amount, subject to any applicable co-payments, deductibles and maximums. All fees paid or otherwise discharged by Contractor for Services provided by a Participating Dentist who is not a PPO Dentist or a Non-Participating Dentist under this Delta Dental PPO program shall be the Allowed Amount as defined in Article I, subject to any applicable co-payments, deductibles and maximums.

Delta Dental Premier<sup>®</sup> shall mean a dental care program for Members under which all fees paid or otherwise discharged by Contractor for Services shall be the Allowed Amount, subject to any applicable co-payments, deductibles and maximums.

Dental Affairs Committee shall mean a duly appointed committee of the Board of Directors of Delta Dental.

Dental Consultants shall mean the Dentist employed or retained by Contractor to review claims assigned to them.

Dentist shall mean any doctor of dental surgery (DDS), doctor of dental medicine (DMD), or other established dental degree, duly licensed by the applicable government authority to practice dentistry.

Dependent(s) shall be defined as the lawful spouse of the Primary Member and children or legal dependents that have attained the age of twenty-six (26) regardless of marital or college

enrollment status. Children or legal dependents of a Primary Member's dependent are not eligible. Coverage for dependent children terminates at the end of the month of employment by the Primary Member or the month the dependent child attains the age of twenty-six (26). The Contractor agrees to notify the State of aging-out termination dates as set forth in the List of Reports, Appendix G. Eligibility shall be determined by the State and the Contractor agrees to accept the eligibility status without documentation other than the enrollment or termination status provided on a weekly basis by the State. The Contractor will determine subscriber and dependent terminations by comparing files and will proactively terminate dependent coverage. The State will verify the status through the reconciliation report. Newborn children of any Primary Member or newborn child of the spouse of any Primary Member are eligible for coverage thirty-one (31) days after birth.

Employee shall mean an Employee or Retiree of the State who meets the eligibility requirements, accepted by Contractor, for enrollment under the Contract, and who is so specified for enrollment.

Family shall mean the Employee or Retiree and all enrolled Dependents of the Employee or Retiree.

Fiscal Year (or Plan Year) shall mean the twelve-month period commencing on the Effective Date and each yearly period thereafter. The State's Fiscal Year is the twelve month period of July 1 to June 30 and referred to as the Fiscal Year of the later year.

Health Insurance Portability and Accountability Act of 1996, (HIPAA) shall mean the statute located at Pub. L. No 104-191 (1996) as amended, and the regulations codified at 45 C.F.R. Parts 160 and 164.

Loss of Eligibility Date. Eligibility of Employee shall terminate on the last day for which Premium is paid for them, or on the last day of the month as specified by State whichever occurs first. Eligibility of Dependents, including spouses, shall terminate at the same time or on the day they no longer qualify as a Dependent.

Maximum Plan Allowance shall mean the amount payable for Services of Participating and Non-Participating Dentists, calculated by Contractor, for use in payment by it and by its Members from claim charges submitted, on a regional basis, for a given Service by Dentists of similar training within the same geographical area blended by Contractor with dentist fee information from a number of other sources, including dentist fee filings, using various factors, subject to regulatory limitations and adjustment for extreme difficulty or unusual circumstances.

Member shall mean, collectively, the Employee or Retiree and all enrolled Dependents, persons eligible for Continuation Coverage, or any of such persons, as designated by the State.

National Provider File shall mean the file maintained by Delta Dental Plans Association listing maximum allowable amounts or equivalents per procedure, by product and network status used by Delta Dental Plans.

Non-Participating Dentist shall mean a Dentist who has not entered into a Participating Dentist Agreement which is currently in effect with Contractor or another Delta Dental Plan.

Participating Dentist shall mean a Dentist, who has entered into a Participating Dentist Agreement which is currently in effect with Contractor or another Delta Dental Plan. A Participating Dentist agrees to abide by the terms and conditions of his/her Agreement and published Bylaws which provide that a Participating Dentist shall be subject to Dental Service Contracts under which a Member is covered by Contractor insofar as they regulate the Services to be provided to Members, the basis of payment therefore, and any other matter pertaining to the obligation of Contractor to Members.

Participating Dentist Agreement shall mean the contract between Contractor and the Participating Dentist who agrees to accept Delta Dental's Allowed Amount and certain other conditions when treating a Member.

PPO Allowed Amount shall mean the lesser of the charged fee, the PPO Maximum Plan Allowance or the equivalent amount as stated in the National Provider File for Participating Dentists of other Delta Dental Plans on which program deductibles, maximums and co-payments are based.

PPO Dentist shall mean a Participating Dentist as defined in Article I who agrees to accept payment, as described in Article VI, Paragraph A, as full payment for Services, provided to Members under this Contract.

PPO Maximum Plan Allowance shall mean an amount, determined by Contractor, usually less than its Maximum Plan Allowance for Delta Dental Premier programs, from claim charges submitted on a regional basis for a given Service by Dentists of similar training within the same geographical area blended by Contractor with dentist fee information from a number of other sources, including dentist fee filings, using various factors, subject to regulatory limitations and adjustment for extreme difficulty or unusual circumstances.

Premium shall mean the Premium or pre-fund payment described in Schedule I, which Schedule is incorporated herein and made a part hereof by reference, as well as the Premium paid by, or on behalf of, a Member for Continuation Coverage. Premiums for Continuation Coverage shall be payable to State, and by State to Contractor, in amounts allowable by law and based on the amounts provided in Schedule I.

Pre-Treatment Estimate shall mean the pretreatment review by Contractor of an Attending Dentist Statement to determine the eligibility of the Member and the benefits available for proposed procedures in accordance with Article IV, Paragraph C.

Primary Member shall mean an Employee or Retiree who is enrolled hereunder.

Prospective Rating Method shall mean the rating method where Contractor is at risk for claims cost versus premium.

Protected Health Information, (PHI) shall mean information related to a Member's health status or Treatment received, that is individually identifiable by reference to the Member.

Records shall mean the data collected by Contractor regarding claims administration.

Retention Rating Method shall mean the rating method where Contractor is at risk for losses, but surpluses are refunded to the purchaser.

Services shall mean the Treatments set forth in Schedule II and any applicable Riders to Schedule II, which Schedule and Riders are incorporated herein and made a part hereof by reference, the provisions, conditions, limitations and exclusions contained in Schedule II, performed by a Dentist or under his/her supervision and direction and when necessary, customary and reasonable, as determined by Contractor, using standards of generally accepted dental practice.

Single Procedure shall mean a dental procedure to which a separate procedure number is assigned by Contractor.

Treatment shall mean a caring for or dealing with an oral condition.

Use of Third Party Administrator: State or Contractor may use the services of a Third Party Administrator ("TPA"), duly registered under applicable state law, as necessary, to provide or receive eligibility, enrollment and/or billing services and to receive such information described in Article II and Article IX, Paragraph A, of the Contract. Any TPA providing such services or receiving such information shall enter into a separate business associate agreement with Contractor or State providing that the TPA shall meet HIPAA requirements for the preservation of protected health information of Members.

## ARTICLE II. ENROLLMENT

- A. Enrollment of Members. State shall enroll Members prior to the onset of the Contract and update such information monthly or more frequently if selected by State thereafter during the Contract Term. This enrollment or update shall be accomplished by State supplying to Contractor a listing of all Employees or Retirees, on enrollment cards furnished by Contractor, by entry on a returned billing statement, by magnetic tape, or in such other format selected by State and approved by Delta Dental. Such listing or format shall include the full names and the Member ID numbers of the Employee or Retiree and whether they are single or have Dependents if eligibility is extended to them under Schedule I, which Schedule is incorporated herein and made a part hereof by reference.
- B. Eligibility. Persons eligible for enrollment as Members shall be those persons described in Schedule I.



- C. Change in Eligibility Status. If Dependents, as designated in Schedule I, are eligible for enrollment and if a Member is initially enrolled as a single person and the enrollment status changes to that of Family during the term of this Contract, such change must be indicated to Contractor in writing on enrollment cards furnished by Contractor, by entry on a returned billing statement, by magnetic tape or in such other format selected by State and approved by Contractor, within thirty (30) days following such change. If a person is initially enrolled at a family rate and his/her status changes to that of single during the term of this Contract, such change must be reported to Contractor in writing as described within thirty (30) days following such change.
- D. Loss of Eligibility. If a Member who has been previously certified by State as eligible loses his/her eligibility, State shall immediately notify Contractor in writing by entry on returned billing statement or magnetic tape or on enrollment cards furnished by Contractor or in such other format selected by State and approved by Contractor.
- E. Eligibility of Newborn Children of Employees and/or Retirees. In order for the coverage of newborn children of covered Primary Members or the spouse of a Primary Member to continue beyond the thirty-one (31) day period, Contractor must be notified of the birth of the newborn child in writing on enrollment cards furnished by Contractor, by entry on a returned billing statement or magnetic tape or in such other format selected by State and approved by Contractor, and payment of the required Premium must be furnished to Contractor within thirty-one (31) days after birth.

### ARTICLE III. ENTITLEMENT TO SERVICES

In consideration of the payment of Premiums by the State, as provided in Schedule I, each Member is entitled to Services under this Contract.

### ARTICLE IV. ADMINISTRATION OF CLAIMS FOR SERVICES

- A. Approval of Claims. Contractor shall administer all claims in accordance with the terms of this Contract. Payment shall be made only on approved claims.
- B. Notification of Dentist. The Member shall notify the Dentist that he/she is a Member under this Contract prior to Treatment and provide the Dentist with his/her social security number or alternate identifier and group number.
- C. Pre-Treatment Estimate of Benefits. If the charges for Services to be provided to a Member exceed an amount which Contractor shall set and adjust periodically, a Member may request the attending Dentist to submit his/her Attending Dentist Statement to Contractor for Pre-Treatment Estimate of benefits before performing his/her procedures. Contractor shall notify the Dentist whether the procedures are within the Services covered by the Contract. The notification shall also state the amount which will be paid providing the Member is eligible on the date when each respective procedure is

commenced, the procedures are completed within a sixty (60) day period following the date of the Pre-Treatment Estimate notice and the claim is submitted within the period set forth in Article IV, Paragraph I, and the benefits continue to be within applicable benefit maximums and frequency of procedure limitations. Subject to the continuing eligibility of the Member, applicable benefit maximums not being exhausted and continuing inapplicability of frequency or procedure limitations, Contractor will grant extensions of a benefit Pre-Treatment Estimate period upon request from the Dentist or the Member.

- D. Supporting Material for Claims. Contractor shall be entitled to receive from any Dentist such information and records or copies of records relating to examinations, diagnosis, and Treatment performed for any Member as may be required to determine eligibility of the Member, Treatment coverage and fees payable under this Contract. All records of patients shall be confidential and nothing therein shall be made public except as provided in Article IX, Paragraph B.
- E. Denial of Claim. If a post-service claim\* is denied in whole or in part, Contractor shall notify the Member and the attending dentist of the denial in writing within thirty (30) days after the claim is filed, unless special circumstances require an extension of time, not exceeding fifteen (15) days, for processing. If there is an extension, the Member and the attending dentist shall be notified of the extension and the reason for the extension within the original thirty (30) day period. If an extension is necessary because either the Member or the attending dentist did not submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information. The Member or the attending dentist shall be afforded at least forty-five (45) days from receipt of the notice within which to provide the specific information. The extension period [fifteen (15) days] - within which a decision must be made by Contractor- will begin to run from the date on which the Member's response is received by the plan (without regard to whether all of the requested information is provided) or, if earlier, the due date established by the plan for furnishing the requested information [at least forty-five (45) days].

The notice of denial shall explain the specific reason or reasons why the claim was denied in whole or in part, including a specific reference to the pertinent Contract provisions on which the denial is based, a description of any additional material or information necessary for the Member to perfect the claim and an explanation as to why such information is necessary. The notice of denial shall also contain an explanation of Contractor's claim review and appeal process and the time limits applicable to such process, including a statement of the Member's right to bring a civil action under ERISA upon completion of Contractor's second level of review. The notice shall refer to any internal rule, guideline, and protocol that was relied upon (and that a copy will be provided free of charge upon request).

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\* Delta Dental does not condition receipt of a benefit, in whole or in part, on approval of the benefit in advance of obtaining dental care. Additionally, Delta Dental does not conduct concurrent review relating to continued or extended health care services, or additional services for an insured undergoing a course of continued Treatment.

If the Member or the attending dentist wants the denial of benefits reviewed, the Member or the attending dentist must write to Contractor within one hundred eighty (180) days of the date on the denial letter. In the letter, the Member or attending dentist should state why the claim should not have been denied. Also any other documents, data, information or comments which are thought to have bearing on the claim including the denial notice, should accompany the request for review. The Member or the attending dentist is entitled to receive upon request and free of charge reasonable access to and copies of all documents, records, and other information relevant to the denied claim. The review will take into account all comments, documents, records, or other information, regardless of whether such information was submitted or considered in the initial benefit determination.

The review shall be conducted on behalf of Contractor by a person who is neither the individual who made the claim denial that is the subject of the review, nor the subordinate of such individual. If the review is of a claim denial based in whole or in part on a clinical judgment in applying the terms of the Contract, Contractor shall consult with a Dentist who has appropriate training and experience in the pertinent field of dentistry and who is neither the Contractor dental consultant who made the claim denial nor the subordinate of such consultant. The identity of the Contractor dental consultant whose advice was obtained in connection with the denial of the claim whether or not the advice was relied upon in making the benefit determination is also available to the Member or the attending dentist on request. In making the review, Contractor will not afford deference to the initial adverse benefit determination.

If after review, Contractor continues to deny the claim, Contractor shall notify the Member and the attending dentist in writing of the decision on the request for review within thirty (30) days of the date the request is received. Contractor shall send to the Member or attending dentist a notice, which contains the specific reason or reasons for the adverse determination and reference to the specific Contract provisions on which the benefit determination is based. The notice shall state that the Member is entitled to receive, upon request and free of charge, reasonable access to, and copies of all documents, records and other information relevant to the Member's claim for benefits. The notice shall refer to any internal rule, guideline, and protocol that was relied upon (and that a copy will be provided free of charge upon request). The notice shall state that if the claim denial is based on lack of dental necessity, experimental treatment or a clinical judgment in applying the terms of the Contract, an explanation is available free of charge upon request by either the Member or the attending dentist. The notice shall also state that the Member has a right to bring an action under ERISA upon completion of Contractor's second level of review, and shall state: "You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency."

If in the opinion of the Member or attending dentist, the matter warrants further consideration, the Member or the Member's attending dentist should advise Contractor in writing as soon as possible. The matter shall then be immediately referred to Delta

Dental's Dental Affairs Committee. This stage can include a clinical examination, if not done previously, and a hearing before Delta Dental's Dental Affairs Committee if requested by the Member or the attending dentist. The Dental Affairs Committee will render a decision within thirty (30) days of the request for further consideration. The decision of the Dental Affairs Committee shall be final insofar as Contractor is concerned. Recourse thereafter would be to the state regulatory agency, a designated state administrative review board, or to the courts with an ERISA or other civil action.

- F. Utilization Review for Quality Control. Contractor shall make periodic investigations of the quality of Services being provided under this Contract, and for such purposes Contractor may enlist the aid of local Dental Consultants. State shall be provided with results of such investigation, subject to the provisions of Article IX, Paragraph B.
- G. Limitation on Initial Assumption of Liability for Claims. Unless and until the first Premium payment is received by Contractor from the State, pursuant to Schedule I, and unless and until the first enrollment lists and/or enrollment cards are received by Contractor from the State, pursuant to Article II, at its principal office, Contractor shall have no obligation to process any claim under this Contract for Members.
- H. Limitation on Liability for Claims on Termination of the Contract or of Members who have Lost Eligibility. In the event of termination of this Contract or the loss of eligibility of a Member, Contractor shall not be authorized to offer Services beyond the termination date of the Contract or the Loss of Eligibility Date or pay for Services beyond such dates except for Single Procedures commenced while the Contract was in effect or the Member was eligible. Any claims paid by Contractor on behalf of an ineligible person or after Contract termination, except for such Single Procedures, shall be the obligation of the State and shall be charged to State as additional Premiums payable in accordance with Schedule I. Notwithstanding the other provisions of this Paragraph of this Article, if Contractor has received notice of Loss of Eligibility pursuant to Article II, Paragraph D or termination of the Contract at the end of a term or early termination pursuant to Article X, Paragraphs C and M, and pays a claim after the Loss of Eligibility Date or termination date which would otherwise be the obligation of the State under this Paragraph of this Article, then such claims shall be the obligation of Contractor.
- I. Time Limitations on Payment of Claims. Contractor shall not be obligated to pay claims submitted more than twelve (12) months after the date of providing the Service. If a claim is denied due to a Participating Dentist's failure to make timely submission, the Member shall not be liable to such Dentist for the amount which would have been payable by Contractor provided the Member notified the Dentist of his/her eligibility at the time of Treatment.

#### ARTICLE V. COORDINATION OF BENEFITS

- A. In the event that any Member hereunder is entitled to benefit under any benefit program other than that described in this Contract, the following Coordination of Benefits

provisions shall determine the sequence and the extent of payment of the expense for benefits provided under this Contract. Such other benefit program may include any State-sponsored program including any group Blue Cross/Blue Shield plan, Delta Dental program or other group prepayment program, group coverage through Health Maintenance Organization and other group practice and individual practice plans, or any State-sponsored insurance program in which the Member is enrolled. Blanket student accident insurance or Medicaid shall not be coordinated. Health programs of any kind shall not be coordinated when the Employee or other individual pays the entire cost thereof or when the program provides any periodic payment or any other payment by the program to Members which is not related to the value of the Service provided to each Member on account of illness or injury.

B. When a claimant is covered under another benefit program to which this Article applies, the following rules will be followed to establish the order of determining liability of this or any other programs:

1. The program covering the Member as an Employee will determine its benefits before the program which covers the Member as a Dependent.
2. The program covering the Member as a Dependent of an Employee whose birthday falls earlier in the Calendar Year will determine its benefits before the program covering the Member as a Dependent of an Employee whose birthday falls later in the Calendar Year. If both Employees have the same birthday, the program covering the Employee for the longest period will determine its benefits before the program covering the Employee for the shorter period.
3. The program covering the Member having custody of the Dependent will determine its benefits first; then the program of the spouse of the parent with custody of the Dependent; and finally, the program of the parent not having custody of the Dependent. However, if the specific terms of a Court Order state that one of the parents is responsible for the health care expenses of the Dependent, the benefits of that program are considered first. The prior sentence shall not apply with respect to any period during which any benefits are actually paid or provided before a program has actual knowledge of the Court Order.
4. The program covering the Member as an Employee or as a Dependent of an Employee will determine its benefits before one which covers the Member as a laid-off or retired Employee or as the Dependent of such person. If the other plan does not have a rule concerning laid-off or retired Employee, and as a result each plan determines its benefits after the other, then the provisions of this subparagraph shall not apply.
5. If the other program does not contain provisions establishing the same order of determining liability for benefits or is one which is "excess" or always "secondary", Contractor shall determine its benefits first. If such determination indicates that Contractor should not have been the first program to determine its

benefits, for purposes of Paragraph C and D of this Article, Contractor shall be considered as not the first to determine its benefits.

6. In situations not described in Subparagraph 1, 2, 3, 4, and 5 of this Paragraph the program under which the Member has been enrolled for the longest period of time will determine its benefits first.
- C. When Contractor is the first to determine its benefits, benefits hereunder will be paid without regard to coverage under any other program.
  - D. When Contractor is not the first to determine its benefits, and there are remaining expenses of the type allowable hereunder, Contractor shall pay only the amount by which its benefits under this Contract exceed the amount of benefits payable under the other program or the amount of such remaining expenses, whichever is less. In no event, shall Contractor pay more than the remaining Dentist charges after the first plan pays which would be allowable for Maximum Plan Allowance calculations or the Allowed Amount whichever is less.
  - E. For the purpose of determining the applicability and implementing the terms of this coordination of benefits provision of this program or any provision of similar purpose of any other program, Contractor may, without the consent of or notice to any person, release to or obtain from any insurance company or other organization or person any information, with respect to any person, demand or make payment which it deems to be necessary for such purposes, and in so acting, Contractor shall be free from any liability that might arise in relation to such action. Any person claiming benefits under this program shall furnish to Contractor such information as may be necessary to implement this provision. Notwithstanding the foregoing, to the extent that a HIPAA Business Associate Addendum between Contractor and State is in effect, and applicable to the disclosure, any disclosure of information by Contractor shall be in accordance with that Business Associate Addendum.

#### ARTICLE VI. PAYMENT FOR COVERED SERVICES

- A. Fees of Participating Dentists Who are PPO Dentists. All fees paid or otherwise discharged by Contractor to Participating Dentists who are PPO Dentists for Services provided to Members under this PPO program, shall be the PPO Allowed Amount, except as constrained by Article VI, Paragraph D.

A Participating Dentist who is a PPO Dentist shall accept the PPO Allowed Amount as defined in Article I, as the total amount payable for the Services provided and shall not charge or accept an additional amount for such Services to or from either Member or Contractor. Any difference between Delta's reimbursement and the PPO Allowed Amount shall be the responsibility of the Member.

- B. Fees of Participating Dentists who are not PPO Dentists. All fees paid or otherwise discharged by Contractor to Participating Dentists other than PPO Dentists for Services provided to Members under this PPO program shall be the Allowed Amount as defined in Article I, except as constrained by Article VI.

A Participating Dentist other than a PPO Dentist shall accept the Allowed Amount as defined in Article I, as the total amount payable for the Services provided and shall not charge or accept an additional amount for such Services. Any difference between Contractor's reimbursement and the Allowed Amount shall be the responsibility of the Member.

- C. Fees of Non-Participating Dentists. Payments by Contractor for Services provided by Non-Participating Dentists to Members under this Contract shall be the Allowed Amount, except as constrained by Article VI, Paragraph D. Any difference between Contractor's reimbursement and the Allowed Amount shall be the responsibility of the Member.
- D. Payment of Fees. All payments for Services provided to Members as calculated in accordance with this Article, shall be payable or otherwise discharged by Contractor unless constrained by deductibles, co-payments or maximums, as set forth in Schedule II, in which case fees shall be payable or otherwise discharged by Contractor and payable by the Member in accordance with Schedule II.

#### ARTICLE VII. EXCLUSIONS AND LIMITATIONS

The Services provided for Members under this Contract shall be limited as specified in Articles of this Contract and in Schedule II.

#### ARTICLE VIII. GENERAL PROVISIONS

- A. Limitation on Liability for Errors and Omissions. This Contract shall impose no liability whatsoever upon either the State Group Plan or Contractor, severally or jointly, for any act or omission, including but not limited to negligence, misfeasance, malfeasance, non-feasance or malpractice on the part of a Dentist, his/her employees or agents, in the performance of dental procedures for a Member.
- B. Doctor-Patient Relationship. Nothing contained in this Contract and Schedules shall be construed as meaning that the relationship between a Dentist and a Member, who is his/her patient, is other than that of a generally accepted relationship of doctor and patient.
- C. Assignment. Neither party in this Contract may assign its interest herein without the written consent of the other party hereto.

- D. Department of Insurance Approval. This Contract is subject to the approval of the Delaware Insurance Department.
- E. Binding Nature of Contract. This Contract and the Schedules attached to it shall be binding upon each party's respective successors and assigns.
- F. Independent Contractor Status of Dentists Providing Services. Any PPO Dentist, or other Dentists, or any Dentist or employee associated with or employed by them, providing Services to Members enrolled in the Delta Dental PPO program, as with other Delta Dental programs, provide such Services as an independent contractor and shall be solely responsible for dental advice and for performance of Services, or lack thereof, to the Member.
- G. Subrogation. Contractor shall notify the State regarding any claims which, in the opinion of Contractor, may involve probable third-party liability, subrogation, or other litigation, and investigate or pursue such claims for recoveries. The State shall be responsible for the investigation and prosecution of any subrogation recoveries it chooses to do beyond those deemed appropriate by Contractor.
- H. Indemnification. Contractor shall indemnify and save harmless State, its directors, officers, employees, agents, successors and assigns from any claim, cost, liability, or expense, asserted by or sustained by a person or entity not a party to this Contract, including assuming the burden and expense of defense against such claims, arising out of or resulting in financial loss or other damage because of any alleged act or alleged failure to act pursuant to this Contract or under this Contract if the alleged action or failure to take action is the responsibility of Contractor under this Contract.
- State shall indemnify and save harmless Contractor, its directors, officers, employees, agents, successors and assigns from any claim, cost, liability, or expense, asserted by or sustained by a person or entity not a party to this Contract, including assuming the burden and expense of defense against such claims, arising out of or resulting in financial loss or other damage because of any alleged act or alleged failure to act pursuant to this Contract or under this Contract if the alleged action or failure to take action is the responsibility of State under this Contract.
- I. State Responsibilities. State, as applicable, shall be solely responsible for its Group Health Plan's compliance with HIPAA's administrative requirements resulting from the State's activities, including but not limited to, privacy officer designation, training, policies and procedures pursuant to 45 C.F.R. § 164.530 etc. State policies and procedures regarding disclosure of PHI shall permit disclosure regarding Dependents only to those persons who qualify as parent or legal guardian/custodian as defined under applicable state law.
- J. Statements Considered Representations. Absent fraud, each statement made by the State or Member is considered to be a representation and not a warranty.



- K. Notices. Communications intended for Contractor shall be addressed to One Delta Drive, Mechanicsburg, PA 17055. State shall designate in writing the name and address of a representative to receive notices from Contractor to State and notices, including HIPAA notices, to Members under this Contract. State may change their representatives at any time on thirty (30) days notice to Contractor. The State representative shall disseminate notices to the Members within thirty (30) days of receipt, unless otherwise agreed by Contractor and State, and disseminate HIPAA notices to Members upon enrollment by the State.
- L. Force Majeure. Neither Contractor nor State shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes are strictly limited to include acts of God or of a public enemy, explosion, fires, unusually severe weather or labor disputes. Dates and times of performance shall be extended to the extent of the delays excused by this paragraph, provided that the party whose performance is affected notifies the other promptly of the existence and nature of the delay.

#### ARTICLE IX. REPORTS AND RECORDS AND INSPECTION THEREOF

- A. Employment Information. For purposes of enrollment of Members under Article II, State shall supply to Contractor such information as is required by the provisions of Article II at the expense of State. Such other employment information as Contractor may need from time to time for purposes of determining eligibility or preparing statistical reports shall be provided by State to Contractor at the expense of State.
- B. Records. Contractor shall maintain adequate records of Services provided under this Contract in order that statistical evaluations of the dental care program can be made. Such records shall be deemed the joint property of the State and Contractor and neither party may release the contents of such records to third parties without the written consent of the other except as otherwise provided by law. Statistical aggregated findings based on such records may be published by Contractor without the consent of the State or a Member, but any such published findings will not disclose the name of the State or Member. The maintenance of all records shall comply with HIPAA and shall meet, to the extent applicable, the HIPAA identification standards in 45 C.F.R. § 164.514.
- C. Right to Audit. Notwithstanding any other provision of this Contract, provided that the standards of confidentiality set forth elsewhere in the Contract and the HIPAA Business Associate Addendum are observed, State shall have the right to audit all of the records maintained by Contractor pertinent to the payment under this Contract during the normal business hours of Contractor after receipt by Contractor as of written notice of the date of the audit at least five (5) business days before the date, whether or not such information is ordinarily reported by Contractor to State. Subject to the Business Associate Addendum, State may select an independent auditor acceptable to Contractor (whose consent shall not be unreasonably withheld) to conduct or assist with any audit under this Contract.

State shall reimburse Contractor for any expense incurred by Contractor assisting State in its audit.

#### ARTICLE X. CONTRACT RENEWAL, MODIFICATION, AND TERMINATION

- A. Renewal, Modification and Termination. This Contract shall be renewed upon written notice from State for a 12-month term under the same terms and conditions including renewal, except that the appropriate change shall be automatically made in Article I, unless either party gives written notice to the other of its desire to modify, in accordance with Paragraphs I and J, of this Article or to terminate at least one hundred fifty (150) days prior to the end of the current term.
- B. Modification due to Reduction in Size of Group. If the Prospective Rating Method or the Retention Rating Method are used pursuant to Schedule I in calculating Premiums and if the number of Employees or Retirees reported by the State to Contractor falls below the minimum number set in Schedule I, for three (3) consecutive months, Contractor may propose to State two (2) or more alternate adjustments in rates, benefits or co-payments in order to remedy adverse group experience which may result from such variations. Within thirty (30) days after such proposal has been sent to State in writing, State shall select one (1) of the alternate adjustments by written notice to Contractor or, if State fails to do so, Contractor may select one (1) or more alternate adjustments in rates, benefits and/or co-payments by written notice to State and the Contract shall thereby be modified on the date set forth in the notice.
- C. Termination and Liability of State on Failure to Pay Premiums. If Premiums, as provided in Schedule I, after notice and billing by Contractor, are not paid when due, State shall be granted a grace period of forty-five (45) days in which to remit the Premium. During the grace period, the Contract shall remain in-force. State shall be liable for the Premium due for the grace period and any Premium not previously paid. Failure to remit the Premium will cause the Contract to terminate on the day following the end of the specified grace period (termination date). After the termination date, Contractor shall only be obligated to pay claims as stated in Paragraphs H and I of Article IV.
- D. Return on Premium on Termination. If, on termination of this Contract, State has paid Premiums to Contractor applicable to a period of time after the termination date, Contractor shall, within thirty (30) days after termination, return any portion of the Premiums to State, together with the amount due on claims, if any, less any amount due to Contractor pursuant to Paragraph C of this Article.
- E. Reinstatement. Acceptance by Contractor after the termination date of the proper amount of Premiums for the period prior to the termination date, shall reinstate the Contract as though it had never been terminated. Acceptance by Contractor of less than the proper amount of Premium shall reduce amount of Premium owed but not reinstate the Contract.

- F. COBRA Exception. Termination of Continuation Coverage for a Member or his/her Dependents for failure to pay Premiums pursuant to Article I, shall not be a "Termination on Failure to Pay Premiums" under Paragraph C of this Article and Paragraphs C, D, E and F of this Article shall specifically not be applicable to termination of Continuation Coverage.
- G. Notification to Members of Contract Termination. Any notification of Contract termination to Members required by ERISA shall be the responsibility of State. Any claims incurred by Members after a termination date because of lack of notice of termination shall be the responsibility of State.
- H. Mandated Changes. If any changes in the provisions of the Contract, including changes in the Schedules or Riders attached to it, are required as a result of any applicable Federal or State laws, or regulations or orders thereunder, such changes shall automatically be incorporated into this Contract. The effective date of all such changes shall be as prescribed in the applicable law, regulations or orders. The changes shall be made in the form of a Modification to the Contract, amendment to the Schedules or substitution of new Schedules or substitution of new Riders, which after obtaining necessary government approvals, shall be promptly sent to State for attachment to the Contract.
- I. State Proposed Changes. If State wishes to make changes in the covered Services, exclusions or limitations in the Contract, it shall give written notice of such proposed changes to Contractor. Such changes, including any resulting Premium increases or decreases, shall then be proposed by Contractor in the form of Modification to the Contract, amendments to the Schedules or substitution of new Schedules or Riders, approved as to form and content by the appropriate governmental authority. Such changes shall have an effective date agreed to by State and Contractor. Timely payment of the Premium at the indicated rate for the period after the effective date by State shall be deemed receipt of notice and acceptance by State of the changes. If State does not pay the indicated Premium for the changes, the Agreement shall continue as though changes had not been proposed.
- J. Contractor Proposed Changes. If Contractor determines that any changes in the provisions of the Contract, including the Schedules or Riders attached to it, are required or warranted, such changes shall be proposed to State in the form and with an effective date, as described in Paragraph I of this Article. The provisions of Paragraph I, concerning approval as to form and content by appropriate governmental authority, deemed receipt of notice and acceptance of changes or continuation of the Agreement, shall apply to changes proposed by Contractor under this Paragraph of this Article.
- K. Reduction or Elimination of Coverage. Notwithstanding anything to the contrary in Paragraphs I and J of this Article, any change in the provisions of the Contract reducing or eliminating coverage shall provide for signed acceptance of the State.
- L. HIPAA Provision Survival. Any and all obligations related to Records maintenance and compliance with HIPAA standards shall survive termination of this Contract.

- M. Termination by State Prior to End of Contract Term. The provisions of this Article and Article I not withstanding, State may terminate the Contract on a termination date at least thirty (30) days after receipt by Contractor of written notice of termination from State. The obligations of Contractor to pay claims shall, as of the termination date, be governed by Paragraphs H and I of Article IV. If a question arises as to whether this Paragraph or Paragraph C of this Article apply, Paragraph C of this Article shall be applicable and not this Paragraph.

#### ARTICLE XI. EXTENT OF THE ENTIRE CONTRACT

The Contract between the parties consists of this printed document together with Schedules I and II.

#### ARTICLE XII. CANCELLATION OF EXISTING CONTRACTS

This Contract supersedes all prior contracts existing between the parties which are inconsistent herewith.

IN WITNESS WHEREOF, the parties hereto have caused this Dental Service Contract to be executed at Dover, Delaware.

STATE OF DELAWARE  
Group Numbers 1259, 1260 and 1261

By: \_\_\_\_\_

Title: DIRECTOR, STATEWIDE BENEFITS

DELTA DENTAL OF DELAWARE, INC.

By: \_\_\_\_\_

Title: President

Contract Term: July 1, 2011 to June 30, 2014

SCHEDULE I

Part 1

DENTAL SERVICE CONTRACT

<u>Group No.</u>	<u>Group Name</u>	<u>Effective Date</u>
1259, 1260 and 1261	STATE OF DELAWARE	July 1, 2011

1. TERMINATION DATE OF THIS CONTRACT PERIOD: June 30, 2014

2. GROUP DEFINITION:

- ☐ Primary Member Only
- ☐ Primary Member and One Dependent
- ☒ Primary Member and All Dependents
- ☐ Primary Member and Specified Dependents

All Members of a defined group must be enrolled by the State as Members. There is no minimum size of the defined group for purposes of Article X, Paragraph B.

3. PREMIUM PAYMENT:

Terms are set forth in the Professional Services Agreement, Section 2, Payment for Services and Expenses.

A. Rate Level(s)

- ☒ A Rate Level for a Primary Member with no Dependents (1-Party) \$31.62; a Rate Level for a Primary Member with Spouse (2-Party) \$64.54; a Rate Level for a Primary Member with Dependent Child or Children (Alternate 2-Party) \$63.34; and a Rate Level for a Primary Member with all Dependents (Family) \$105.70 (4 STEP).

4. DECLARATION:

State shall receive a \$10,000.00 communication/implementation credit to be used for communication materials supplied to/for State of Delaware Employees to be utilized during the first contract year. (July 1, 2011 to June 30, 2012).

SCHEDULE I

Part 2

DENTAL SERVICE CONTRACT

<u>Group No.</u>	<u>Group Name</u>	<u>Effective Date</u>
1259, 1260 and 1261	STATE OF DELAWARE	July 1, 2014

1. TERMINATION DATE OF THIS CONTRACT PERIOD: June 30, 2016

2. GROUP DEFINITION:

- ☐ Primary Member Only  
☐ Primary Member and One Dependent  
☒ Primary Member and All Dependents  
☐ Primary Member and Specified Dependents

All Members of a defined group must be enrolled by the State as Members. There is no minimum size of the defined group for purposes of Article X, Paragraph B.

3. PREMIUM PAYMENT:

Terms are set forth in the Professional Services Agreement, Section 2, Payment for Services and Expenses.

A. VARIABLE RATE LEVEL(S) CEILING of 6.4% for Plan Year FY15 (July 1, 2014 to June 30, 2015)

☒ A Rate Level for a Primary Member with no Dependents (1-Party) \$33.64; a Rate Level for a Primary Member with Spouse (2-Party) \$68.68; a Rate Level for a Primary Member with a Dependent Child or Children (Alternate 2-Party) \$67.42; and a Rate Level for a Primary Member with all Dependents (Family) \$112.52 (4 STEP).

B. VARIABLE RATE LEVEL(S) CEILING of 3.2% for Plan Year FY16 (July 1, 2015 to June 30, 2016)

☒ A Rate Level for a Primary Member with no Dependents (1-Party) \$34.72; a Rate Level for a Primary Member with Spouse (2-Party) \$70.88; a Rate Level for a Primary Member with a Dependent Child or Children (Alternate 2-Party) \$69.58; and a Rate Level for a Primary Member with all Dependents (Family) \$116.12 (4 STEP).

IN WITNESS WHEREOF, the parties hereto have caused this Dental Service Contract to be renewed with the substitution of this Schedule I for the Schedule I attached to the original Contract; in all other respects the original Contract shall remain in full force and effect.

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STATE OF DELAWARE  
Group Nos. 1259, 1260 and 1261

By: \_\_\_\_\_

Title: DIRECTOR, STATEWIDE BENEFIT

DELTA DENTAL OF DELAWARE, INC.

By: \_\_\_\_\_

Title: President

SCHEDULE II

DELTA DENTAL PPO<sup>SM</sup> DENTAL SERVICE CONTRACT  
FOR EXPERIENCE RATED GROUPS

Group No.

Group Name

Effective Date

1259, 1260 and 1261

STATE OF DELAWARE

July 1, 2011

In order to obtain the maximum benefit under this Contract, Members must have Services performed by a PPO Dentist. Higher patient co-payment, or higher deductibles or lower maximums, or any combination of these will be applied to Services performed by Participating Dentists who are not PPO Dentists and Non-Participating Dentists. Differences in co-payment, deductibles and maximums for Services provided by PPO Dentists versus Services provided by Participating Dentists who are not PPO Dentists and Non-Participating Dentists are set forth in Section 2, Subsection C of this Schedule II. There will be no limit to the amount of balance billing to Members for Services performed by a Non-Participating Dentists.

SECTION 1. SERVICES

Subject to the exclusions, conditions and limitations hereinafter set forth, each Member hereunder shall be entitled to the following benefits as **indicated by a check in the box preceding the applicable benefit:**

A. Basic Benefits consisting of:

- ☒ 1. Diagnostic. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, procedures to assist Dentists in evaluating the existing conditions to determine the required dental Treatment.
- ☒ 2. Preventive. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, procedures to prevent the occurrence of all disease. These services include:
  - a. Prophylaxis
  - b. Topical application of fluoride solutions
  - c. Space maintainers when used to maintain existing space to age 19
- ☒ 3. Basic Restorative. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, amalgam, synthetic porcelain and plastic restorations for Treatment of carious lesions.
- ☒ 4. Major Restorative. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, single crowns, inlays and onlays, gold or cast restorations when teeth cannot be restored with amalgam, synthetic porcelain or plastic restorations.



- ☒ 5. Oral Surgery. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for extraction and other oral surgery including pre- and post-operative care.
- ☒ 6. Endodontics. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for pulpal therapy and root canal filling.
- ☒ 7. Non-Surgical Periodontics. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for non-surgical Treatment of disease of the gums and supporting structures of the teeth.
- ☒ 8. Prosthodontics. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, materials and procedures for constructions of bridges, partial and complete dentures.
- ☒ 9. Orthodontics. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, materials, devices and procedures for the correction of malposed teeth.
- ☒ 10. Surgical Periodontics. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for surgical Treatment of disease of the gums and supporting structures of the teeth.
- ☒ 11. General Anesthesia. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for general anesthesia when administered by a Dentist for a covered oral surgery procedure.

## SECTION 2. GENERAL EXCLUSIONS AND LIMITATIONS

### A. Excluded Benefits:

- 1. Treatment or materials which are benefits to an Member under Medicare or Medicaid unless this exclusion is prohibited by law.
- 2. Treatment or materials with respect to congenital skeletal malformation or Treatment of enamel hypoplasia (lack of development), except that this exclusion shall not affect eligible newborn children as described in the definition of Dependent in Article I of the Contract so long as such dependent children continue to be eligible. When Services are not excluded under this provision as to Dependent children who continue to be eligible, other limitations and exclusions of this Schedule shall specifically apply.
- 3. Treatment that increases the vertical dimension of an occlusion, replace tooth structure lost by attrition or erosion, or otherwise unless it is part of a Treatment dentally necessary due to accident or injury and directly attributable thereto or a covered procedure in a Rider to this Schedule.

4. Treatment or materials primarily for cosmetic purposes including but not limited to Treatment of fluorosis (a type of discoloration of the teeth) and porcelain or other veneers not for restorative purposes, except as part of a Treatment dentally necessary due to accident or injury and directly attributable thereto. If Services are not excluded as to particular teeth under this provision, cosmetic Treatment of teeth adjacent or near the affected ones is excluded.
5. Treatment or materials for which the Member would have no legal obligation to pay.
6. Services provided or materials furnished prior to the effective eligibility date of an Member under this Contract unless the Treatment was a year in duration and was completed after the Member became eligible except insofar as the limitations in Section 2, Subsection B, Paragraphs 2 and 5 of the Schedule do not apply.
7. Periodontal splinting, equilibration, gnathological recordings and associated Treatment and extra-oral grafts.
8. Preventive plaque control programs, including oral hygiene instruction programs.
9. Fissure sealants unless covered under a Rider to this Schedule.
10. Myofunctional therapy, unless covered by the exception in Section 2, Subsection A, Paragraph 2 of this Schedule or a covered procedure in a Rider to this Schedule.
11. Temporomandibular joint dysfunction, unless covered by the exception in Section 2, Subsection A, Paragraph 2 of this Schedule or under a Rider to this Schedule.
12. Prescription drugs including topically applied medication for Treatment of periodontal disease, pre-medication, analgesias, separate charges for local anesthetics, general anesthesia except as a covered benefit in Section 1, Subsection A, Paragraph 11 of this Schedule or in a Rider to this Schedule.
13. Implants and related Services, unless covered by the exception in Section 2, Subsection A, Paragraph 2 of this Schedule or under a Rider to this Schedule.
14. Experimental procedures which have not been accepted by the American Dental Association.
15. Services provided or materials furnished after the termination date of coverage for which Premium has been paid, as applicable to individual Members or State, except this shall not apply to Services commenced while the Contract was in effect or the Member was eligible.
16. Treatment or materials provided in a hospital or any other surgical Treatment facility except as a covered benefit in Section 1, Subsection A of this schedule.
17. Dental practice administrative services including but not limited to, preparation of claims, any non-Treatment phase of dentistry such as provision of an antiseptic environment, sterilization of equipment or infection control, or any ancillary materials used during the routine course of providing Treatment such as cotton swabs, gauze, bibs, masks, or relaxation techniques such as music.
18. Replacement of existing restorations for any purpose other than restoring active carious lesions or demonstrable breakdown of the restoration.

B. Benefits to Members shall be limited as follows unless otherwise limited under separate Rider(s) to this Schedule:

1. Limitation on Optional Treatment Plan. In all cases in which there are optional plans of Treatment carrying different Treatment costs, payment will be made only for the applicable percentage of the least costly course of Treatment, so long as such Treatment will restore the oral condition in a professionally accepted manner, with the balance of the Treatment cost remaining the responsibility of the Member. Such optional Treatment includes, but is not limited to, specialized techniques involving gold, precision partial attachments, overlays, implants, bridge attachments, precision dentures, personalization or characterization such as jewels or lettering, shoulders on crowns or other means of unbundling procedures into individual components not customarily performed alone in generally accepted dental practice.
2. Limitation on Major Restorative Benefits. If a tooth can be restored with amalgam, synthetic porcelain or plastic, but the Member and the Dentist select another type of restoration, the obligation of Contractor shall be only to pay the applicable percentage of the fee appropriate to the least costly restorative procedure. The balance of the Treatment shall be considered a dental Treatment excluded from coverage under this Contract. Replacement of crowns, jackets, inlays and onlays shall be provided no more often than once in any five-year period and then only in the event that the existing crown, jacket, inlay or onlay is not satisfactory and cannot be made satisfactory. The five-year period shall be measured from the date on which the restoration was last supplied, whether paid for under the provisions of this Contract, under any prior dental care contract, or by the Member.
3. Limitation on Diagnostic Aids. Full mouth x-rays and panorex x-rays accompanied by bitewing x-rays are limited to once in any three-year period. Bitewing x-rays are limited to twice in any Fiscal Year period. Periodic examinations of the full mouth are limited to twice in any Fiscal Year period. When an eligible Member is pregnant one additional oral examination shall be benefited during the Fiscal Year period. Written confirmation of the pregnancy must be provided by the Member or her Dentist when the claim is submitted.
4. Limitation on Prophylaxes and Fluoride. Prophylaxes and fluoride application may be performed either together or separately. Prophylaxes are limited to twice in any Fiscal Year period. Two additional periodontal prophylaxes are limited to twice in any Fiscal Year. When an eligible Member is pregnant, the Member shall receive an additional pregnancy benefit which includes either one (1) additional routine prophylaxis during the Fiscal Year period or one (1) additional periodontal scaling and root planing per quadrant in any Fiscal Year period, subject to the normal periodontal reporting guidelines. Written confirmation of the pregnancy must be provided by the Member or her Dentist when the claim is submitted. Fluoride applications as a benefit are limited to twice in any Fiscal Year period up to age 19.
5. Limitation on Prosthodontic Benefits. Replacement of an existing denture will be made only if it is unsatisfactory and cannot be made satisfactory. Services which are necessary to make such appliances fit will be provided in accordance with the Contract. Prosthodontic appliances and abutment crowns will be replaced only after five (5) years have elapsed following any prior provision of such appliances and abutment crowns under any plan procedure.
6. Limitation on Orthodontic Benefits. Orthodontic benefits are limited to devices and procedures for the correction of malposed teeth of Dependents up to age 26 (end of the month), through the completion of the procedures; or to the date eligibility terminates or the Contract terminates, which ever occurs first. Contractor shall pay half of the orthodontic payment at the time of banding and the remaining half shall be paid one year later. If the Treatment is 12 months or less, Contractor's

orthodontic payment will be paid as a lump sum at the beginning of the orthodontic Treatment. The obligation of Contractor to make payments for orthodontic Treatment will cease upon termination of Treatment for any reason, prior to completion of the procedure. Contractor will not make any payment for repair or replacement of orthodontic appliances furnished pursuant to the Contract.

7. Limitation on Oral Surgery Benefits. Benefits for specific oral surgery procedures, including but not limited to reduction of fractures, removal of tumors, and removal of impacted teeth payable under a medical insurance contract or a medical or hospital service contract by which the Member is covered shall be determined first under this contract. Contractor's obligation for these oral surgery Services shall be limited to the difference between benefits paid under such other contracts up to the Allowed Amount for the procedure less the applicable deductible and patient co-payment. When there is no medical or hospital coverage, Contractor's obligation for oral surgery Services shall be limited to the Allowed Amount for those Services provided under the Contract less the applicable deductible and patient co-payment.
8. Limitation on Periodontal Surgery. Benefits for periodontal surgery in the same quadrant are limited to once in any five-year period. The five-year period shall be measured from the date on which the last periodontal surgery was performed in that quadrant, whether paid for under the provisions of this Contract, under any prior dental contract, or by the Member.
9. Limitation on Sealants. Treatment with sealants as a covered Service is limited to applications to eight posterior teeth. Applications to deciduous teeth or teeth with caries are not covered Services. Sealants will be replaced only after three (3) years have elapsed following any prior provision of such materials.
10. Limitation on Occlusal Restorations. Single-surface occlusal restorations of a tooth to which a sealant has been applied within twelve months, and two or three surface restorations within six months, which include occlusal surfaces on which sealants have been placed are not covered Services. If a single-surface occlusal restoration is performed on a tooth from twelve to thirty-six months after a sealant has been applied to that tooth, the obligation of Contractor shall be only to pay the fee appropriate to the restoration in excess of the fee paid for the application of the sealant.

C. Payments for Services to Members shall be limited as follows:

1. Offset for Workers' Compensation. Services or supplies for injuries or conditions which are compensable under Workers' Compensation or Employers' Liability laws shall be an offset against amounts payable under this Contract. The offset shall be credited against the obligation of Contractor and Member in the percentages set forth in Section 2, Subsection C, Paragraph 3 of this Schedule.
2. Deductible:
  - a. If Services are provided by a PPO Dentists, Contractor shall not be obligated to pay for or otherwise discharge, in whole or in part, a deductible consisting of the first \$50.00 of fees for Services, calculated in accordance with Article VI, which are covered benefits received by an Member under the Contract. Such deductible amount shall not exceed \$150.00 for all Members in a single Family.
  - b. If Services are provided by a Participating Dentists who is not a PPO Dentist or a Non-Participating Dentist, Contractor shall not be obligated to pay for or otherwise discharge, in whole or in part, a deductible consisting of the first \$50.00 of fees for Services, calculated in accordance with Article VI, which are covered benefits received by an Member during the Contract Term. Such deductible amount shall not exceed \$150.00 for all Members in a single Family.
  - c. Such deductible amount shall apply:

<u>n/a</u>	Once each Calendar Year or portion thereof during which the Member is continuously eligible under this Contract.
<u>x</u>	Once each Fiscal Year or portion thereof during which the Member is continuously eligible under this Contract.
<u>n/a</u>	Once in the lifetime of the Member.
<u>x</u>	To all benefits except the following:  Diagnostic, Preventive and Sealants There is a \$50.00 lifetime deductible for Orthodontics
  - d. Payments by Members for Services which are not Contract benefits, co-payment made by Members pursuant to Schedule II, Section 2, Subsection C, Paragraph 3, and payments made to Non-Participating Dentists in excess of fees for Services calculated in accordance with Article VI shall not be counted in determining whether the deductible amount has been satisfied.

3. Co-Payment:

- a. If Services are provided by a PPO Dentist, Member shall pay a proportionate share of the fee as calculated in accordance with Article VI, after application of the deductible set forth in Schedule II, Section 2, Subsection C, Paragraph 2a, as follows:

<u>SERVICES PERFORMED</u>		<u>PAID BY CONTRACTOR</u>	<u>PAID BY PATIENT AS CO-INSURER</u>
I.	Diagnostic	<u>100%</u>	<u>0%</u>
II.	Preventive	<u>100%</u>	<u>0%</u>
III.	Basic Restorative	<u>80%</u>	<u>20%</u>
IV.	Major Restorative	<u>50%</u>	<u>50%</u>
V.	Oral Surgery	<u>*%</u>	<u>*%</u>
VI.	Endodontics	<u>80%</u>	<u>20%</u>
VII.	Non-Surgical Periodontics	<u>80%</u>	<u>20%</u>
VIII.	Prosthodontics	<u>50%</u>	<u>50%</u>
IX.	Orthodontics	<u>50%</u>	<u>50%</u>
X.	Surgical Periodontics	<u>50%</u>	<u>50%</u>
XI.	General Anesthesia	<u>50%</u>	<u>50%</u>

- b. If Services are provided by a Participating Dentist who is not a PPO Dentist or a Non-Participating Dentist, Member shall pay a proportionate share of the fee as calculated in accordance with Article VI, after application of the deductible set forth in Schedule II, Section 2, Subsection C, Paragraph 2b, as follows: Contractor does not limit charges of Non-Participating Dentists, so they may charge amounts in excess of Contractor benefits and patient co-payment to the Member.

<u>SERVICES PERFORMED</u>		<u>PAID BY CONTRACTOR</u>	<u>PAID BY PATIENT AS CO-INSURER</u>
I.	Diagnostic	<u>80%</u>	<u>20%</u>
II.	Preventive	<u>80%</u>	<u>20%</u>
III.	Basic Restorative	<u>80%</u>	<u>20%</u>
IV.	Major Restorative	<u>50%</u>	<u>50%</u>
V.	Oral Surgery	<u>*%</u>	<u>*%</u>
VI.	Endodontics	<u>80%</u>	<u>20%</u>
VII.	Non-Surgical Periodontics	<u>80%</u>	<u>20%</u>
VIII.	Prosthodontics	<u>50%</u>	<u>50%</u>
IX.	Orthodontics	<u>50%</u>	<u>50%</u>
X.	Surgical Periodontics	<u>50%</u>	<u>50%</u>
XI.	General Anesthesia	<u>50%</u>	<u>50%</u>

\*Refer to Form R-3-DE

4. Maximum:

- a. If Services are provided by a PPO Dentist, the maximum amount payable provided to any Member for benefits as defined in Schedule II, Section 1

and limited by any deductibles and the co-payment set forth in Schedule II, Section 2, Subsection C, Paragraphs 2a and 3a respectively is \$1,500.00.

- b. If Services are provided by a Participating Dentist who is not a PPO Dentist or a Non-Participating Dentist, the maximum amount payable provided to any Member for benefits as defined in Schedule II, Section 1 and limited by any deductibles and the co-payment set forth in Schedule II, Section 2, Subsection C, Paragraphs 2b and 3b respectively is \$1,500.00.

- c. Such maximum amount shall apply:

n/a For each Calendar Year or portion thereof during which the Member is continuously eligible under this Contract.  
x For each Fiscal Year or portion thereof during which the Member is continuously eligible under this Contract.

- d. If Services are provided by a PPO Dentist, the maximum amount payable for orthodontics for the lifetime of the Member, whether paid for under the provisions of this Contract or under any prior dental care contract for benefits as defined in Schedule II, Section 1 and limited by any deductibles and the co-payment set forth in Schedule II, Section 2, Subsection C, Paragraphs 2a and 3a respectively shall be \$1,000.00.

- e. If Services are provided by a Participating Dentist who is not a PPO Dentist or a Non-Participating Dentist, the maximum amount payable for orthodontics for the lifetime of the Member, whether paid for under the provisions of this Contract or under any prior dental care contract for benefits as defined in Schedule II, Section 1 and limited by any deductibles and the co-payment set forth in Schedule II, Section 2, Subsection C, Paragraphs 2b and 3b respectively shall be \$1,000.00.

5. Emergency Services. When emergency Treatment is necessary and the Member cannot attend a PPO Dentist, payment for such emergency Services shall be limited to any applicable deductibles, co-payment and maximums set forth in Schedule II, Section 2, Subsection C, Paragraphs 2a, 3a, and 4a, as if the emergency Services were provided by a PPO Dentist. Emergency Services include emergency examinations and emergency palliative Treatment to relieve acute pain. Documentation of the emergency nature of such Services including radiographs and/or a narrative from the treating Dentist may be required by Contractor. Should the patient receive further Services from the same treating Dentist, payment will be calculated in accordance with Article VI, Paragraph B.

6. Reduction for Automobile Insurance Benefits. Fees for Services or supplies for injuries or conditions payable under this Contract shall be reduced by the amount of any first party benefits under automobile insurance and by any catastrophic loss benefits paid by the Catastrophic Loss Trust Fund. Fees not paid as first party benefits shall be payable proportionately as the obligation of Contractor and Member in the percentages set forth in Section 2, Subsection C, Paragraph 3 of this Schedule.

Any deductible under Section 2, Subsection C, of this Schedule shall be considered satisfied to the extent of first party benefits under automobile insurance and by any catastrophic loss benefits paid by the Catastrophic Loss Fund.

D. Notification for Members:

When a claim for Services is approved for payment, Contractor shall notify the Member of the Dentist's charge, Contractor's calculation of the PPO Allowed Amount, or Contractor's calculation of the Allowed Amount as defined in Article I, and amounts for which the Member is obligated to pay under this Contract.

If the Services are provided by a PPO Dentist, the Member's obligation to pay the PPO Dentist is limited to any applicable deductible and co-payment, and any portion of the PPO Allowed Amount which exceeds applicable program maximums.

If the Services are provided by a Participating Dentist who is not a PPO Dentist, the Member's obligation to pay that Participating Dentist is limited to any applicable deductible, co-payment, and any portion of the Allowed Amount, as defined in Article I, which exceeds applicable program maximums.

If the Services are provided by a Non-Participating Dentist, the Member's payment obligation to the Non-Participating Dentist is not limited by this Contract.



RIDER

to

SCHEDULE II

DENTAL SERVICE CONTRACT

Group No.

Group Name

Effective Date

1259, 1260 and 1261

STATE OF DELAWARE

July 1, 2007

SECTION 1. SERVICES

Subject to the exclusions, conditions and limitations in Schedule II and as modified herein, each Member shall be entitled to the following benefits as indicated by a check in the box preceding the applicable benefit:

A. Basic Benefits Consisting of:

- ☒ Sealants. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for topically applied acrylic, plastic or composite material (fissure sealants) to prevent decay and ingress of food particles in permanent, posterior teeth.

SECTION 2. GENERAL EXCLUSIONS AND LIMITATIONS

A. Excluded Benefits:

9. Fissure sealants except as a covered benefit in Section 1, Subsection A of this Rider.

B. Benefits to Members shall be limited as follows:

Limitation on Sealants. Application of sealants as a benefit is limited to dependents up to age 16 through the completion of the procedure or the date eligibility terminates, whichever occurs first. Treatment with sealants as a covered service is limited to applications to eight posterior teeth. Applications to deciduous teeth or teeth with caries are not covered services. Sealants will be replaced only after three (3) years have elapsed following any prior provision of such materials.

Limitation on Occlusal Restorations. Single-surface occlusal restorations of a tooth to which a sealant has been applied within twelve months, and two or three surface restorations within six months, which include occlusal surfaces on which sealants have been placed are not covered services under Section 1, Subsection A, Paragraph 3 of Schedule II. If a single-surface occlusal restoration is performed on a tooth from twelve to thirty-six months after a sealant has been applied to that tooth, the obligation of Contractor shall be only to pay the fee appropriate to the restoration in excess of the fee paid for the application of the sealant under Section 1, Subsection A, Paragraph entitled Sealants of this Rider.

C. Payments for Services to Members shall be limited as follows:

Co-Payment:

Members shall pay a proportionate share of the fee as calculated in accordance with Article VI, after application of the deductible, as follows:

<u>SERVICE PERFORMED</u>	<u>PAID BY CONTRACTOR</u>	<u>PAID BY PATIENT AS CO-INSURER</u>
Sealants	<u>*100%</u>	<u>*0%</u>

\* Above co-payments apply to Services provided by PPO Dentists. If Services are provided by a Participating Dentist who is not a PPO Dentist or a Non-Participating Dentist, 80% will be paid by Contractor and 20% will be paid by patient as co-insurer.

RIDER

to

SCHEDULE II

DENTAL SERVICE CONTRACT

Group No.

Group Name

Effective Date

1259, 1260 and 1261

STATE OF DELAWARE

July 1, 2011

SECTION 1. SERVICES

Subject to exclusions, conditions and limitations in Schedule II and as modified herein, each Member shall be entitled to the following benefits as indicated by a check in the box preceding the applicable benefit:

A. Basic Benefits consisting of:



Adult Orthodontics. Provides for procedures performed by a licensed dentist and involving the use of an active appliance and post-treatment retentive appliances for the Treatment of malalignment of teeth and/or jaws which significantly interferes with their function.

SECTION 2. GENERAL EXCLUSIONS AND LIMITATIONS

A. Excluded Benefits:

Devices and procedures for construction of malposed teeth, except as a covered benefit in Section 1, Subsection A of this Rider, or except where Orthodontics are a covered benefit in Section 1, Subsection A of Schedule II.

B. Benefits to Members shall be limited as follows:

Limitation on Orthodontics Benefits. If Orthodontics are a benefit under Section 1, Subsection A of Schedule II, the Limitations on Orthodontics, found in Section 2, Subsection B of Schedule II shall be modified to the extent that the services described therein are a covered benefit in Section 1, Subsection A of this Rider.

C. Payments for Services to Members shall be limited as follows:

Co-Payment:

Members shall pay a proportionate share of the fee as calculated in accordance with Article VI, after application of the deductible, as follows:

<u>SERVICES PERFORMED</u>	<u>PAID BY CONTRACTOR</u>	<u>PAID BY PATIENT AS CO-INSURER</u>
Adult Orthodontics	<u>50%</u>	<u>50%</u>

Maximum:

The maximum amount payable provided to any Member for Adult Orthodontics for the lifetime of the Member shall be \$ 1,000.00, whether paid for under the provisions of this Contract or under any prior dental care contract.

to

SCHEDULE II

DENTAL SERVICE CONTRACT

Group No.

Group Name

Effective Date

1259, 1260 and 1261

STATE OF DELAWARE

July 1, 2011

SECTION 1. SERVICES

Subject to exclusions, conditions and limitations in Schedule II and as modified herein, each Member shall be entitled to the following benefits as indicated by a check in the box preceding the applicable benefit:

A. Basic Benefits consisting of:

- ☒ Denture Repair. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for repair of broken, complete or partial dentures, repair or replacement of broken teeth on dentures, reattachment, replacement or repair of broken clasps on dentures.

SECTION 2. GENERAL EXCLUSIONS AND LIMITATIONS

A. Excluded Benefits:

Materials and procedures for construction of bridges, partial and complete dentures, except as a covered benefit in Section 1, Subsection A of this Rider, or except where Prosthodontics are a covered benefit in Section 1, Subsection A of Schedule II.

B. Benefits to Members shall be limited as follows:

Limitation on Prosthodontic Benefits. If Prosthodontics are a benefit under Section 1, Subsection A of Schedule II, the Limitation on Prosthodontics, found in Section 2, Subsection B of Schedule II shall be modified to the extent that the Services described therein are a covered benefit in Section 1, Subsection A of this Rider.

C. Payments for Services to Members shall be limited as follows:

Co-Payment:

Member shall pay a proportionate share of the fee as calculated in accordance with Article VI, after application of the deductible, as follows:

<u>SERVICE PERFORMED</u>	<u>PAID BY CONTRACTOR</u>	<u>PAID BY PATIENT AS CO-INSURER</u>
Denture Repair	<u>80%</u>	<u>20%</u>

RIDER

to

SCHEDULE II

DENTAL SERVICE CONTRACT

Group No.

Group Name

Effective Date

1259, 1260 and 1261

STATE OF DELAWARE

July 1, 2011

SECTION 1. SERVICES

Subject to exclusions, conditions and limitations hereinafter set forth, each Member hereunder shall be entitled to the following benefits **as indicated by the check in the box preceding the applicable benefit:**

A. Basic Benefits consisting of:

- ☒ Simple Extraction. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for removal of teeth without complication, impaction or surgery.
- ☒ General Oral Surgery. Provides, when necessary and customary as determined by the standards of generally accepted dental practice, for oral surgery including pre- and post-operative care.

C. Payments for Services to Members shall be limited as follows:

Co-Payment:

Member shall pay a proportionate share of the fee as calculated in accordance with Article VI, after application of the deductible, set forth in Section 2, Subsection C, Paragraph 3 of Schedule II, and as modified herein.

<u>SERVICES PERFORMED</u>	<u>PAID BY CONTRACTOR</u>	<u>PAID BY PATIENT AS CO-INSURER</u>
Simple Extraction	<u>80%</u>	<u>20%</u>
General Oral Surgery	<u>50%</u>	<u>50%</u>

# APPENDICES C and D

(Reserved)

# APPENDIX E

(Performance Guarantees)



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*Account Management Team Survey*

*Delta Dental*

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**Account Management Team Survey – Delta Dental**

For Reporting Period: FY \_\_\_\_ Quarter : \_\_\_\_  
 Completed by: SBO Vendor Management Team

The Vendor Management Team of the Statewide Benefits Office is using this tool to evaluate the Account Management Team of Delta Dental in serving as a provider of dental services to the employees and pensioners of the State of Delaware.

**Knowledge:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
1. Understands your benefits plan.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Understands your business needs. Meets with you to establish needs and service expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Understands your service expectations. Develops a business plan that incorporates the agreed upon needs and expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Displays knowledge regarding dental benefit products and services.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Clearly explains your report results.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					Average Rating	

**Professionalism:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
6. Actively listens to and acknowledges your issues and concerns.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Provides appropriate verbal communication.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Provides appropriate written communication.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Works with you to develop a positive working relationship.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Average Rating \_\_\_\_\_

**Proactive Management:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
10. Actively monitors your account and interacts with you in a frequency that meets your needs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. Communicates potential problems/issues.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12. Provides viable alternative solutions that meet your business needs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13. Manages and understands system requirements and their effect on your business.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14. Sets realistic expectations regarding turn-around time.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Average Rating \_\_\_\_\_

**Accessibility:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
15. Available to you on a timely basis.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
16. Allocates appropriate time when meeting with you.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
17. Demonstrates flexibility with regard to schedule changes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18. Provides/communicates alternate contacts in the event of their absence.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19. Advises you of schedule limitations upon contact for meetings, conference calls, projects etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Average Rating \_\_\_\_\_

**Responsiveness:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	Agree 4	Somewhat Agree 3	Disagree 2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
20. Responds to your inquiries in a timely manner.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
21. Provides thorough responses to your inquiries.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
22. Follows-through regarding outstanding problems/issues/items.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
23. Solicits the assistance of product experts when needed.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Average Rating \_\_\_\_\_

Overall Average Rating \_\_\_\_\_

**Please include any other comments or suggested action steps:**

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# Delta Dental Performance Guarantees

**Client: State of Delaware, Group Numbers 1259, 1260 & 1261**  
**Effective: 07/01/2011 – 06/30/2014\*\***

*Performance guarantee results are measured on The State of Delaware's account experience, unless otherwise noted. All performance guarantees shall be reported on a quarterly basis and provided no later than 60 days following the close of each quarter. Quarterly results will be averaged on an annual basis, and payments, if any, shall be made annually within six (6) months of the end of the plan year.*

Service Category	Expected Standards/Results	Amount of Premium at Risk*
<b>Account Management</b>	A member of Delta Dental's account management team will meet with the State of Delaware semi-annually and will participate in semi-annual conference calls to supplement the meetings.	<b>0.2 percent</b>
<b>ID Cards</b>	Delta Dental will mail 90% of ID cards within ten working days of receipt of complete enrollment.	<b>0.2 percent</b>
<b>Claims Turnaround</b>	At least 90% of claims received by Delta Dental will be processed within 15 calendar days.  <i>Claims turnaround is measured from the date of the initial receipt of the claim for payment with complete information to the date the claim is processed.</i>  Measurement will be on a group-specific basis.	<b>0.5 percent</b>
<b>Overall Claims Accuracy</b>	Payment accuracy will be at least 98%.  <i>Payment accuracy is calculated from a random sample and defined as the number of claims in the sample without payment errors divided by the total number of claims in the sample.</i>  Measurement will be on a group-specific basis.	<b>0.5 percent</b>
	Processing accuracy will be at least 97%.  <i>Processing accuracy is calculated from a random sample and defined as the number of claims in the sample without payment or nonpayment errors divided by the total number of claims in the sample.</i>  Measurement will be on a group-specific basis.	<b>0.5 percent</b>
<b>Customer Service Response</b>	90% of all customer calls to the Delta Dental Contact Center will be answered within 45 seconds.  Measurement will be on a global basis.	<b>0.2 percent</b>
	Call abandonment rate will be 5.0% or less.  Measurement will be on a global basis.	<b>0.2 percent</b>

\*Excludes commission. Delta Dental will not incur penalties for its failure to meet the terms of these guarantees if this failure is caused by fires, acts of public enemies, acts of God, civil disturbances, labor disputes, or by any similar act or event beyond the reasonable control of the client or Delta Dental

<b>Service Category</b>	<b>Expected Standards/Results</b>	<b>Amount of Premium at Risk*</b>
<b>Satisfaction</b>	Delta Dental will achieve an overall average score of 4.0 or better on a mutually agreed upon Account Satisfaction Survey.  Measurement will be on a group-specific basis.	<b>0.5 percent</b>
	Delta Dental will attend and actively participate at Statewide Benefits Office's request in Benefit Representative meetings, Health Fairs and other meetings/presentations. Delta Dental will present information via visual aids, brochures, etc. to promote the program.  Measurement will be on a group-specific basis	<b>0.25 percent</b>
	Delta Dental will survey 5% of claimant enrollees. 90% of the surveyed enrollees will be satisfied with Delta Dental based on mutually agreed upon Member Satisfaction Survey.  Measurement will be on a global basis.  <i>If Delta Dental does not have a return rate of at least 10% of all surveys mailed to claimants, this guarantee is null and void.</i>	<b>0.5 percent</b>
<b>Dentist Network Recruitment</b>	Delta Dental will pursue newly licensed and Non-Participating dentists in Delaware encouraging participation in the Delta Dental PPO and Delta Dental Premier networks.	<b>0.2 percent</b>
<b>Timely Reporting</b>	Billing and other mutually agreed upon reports will be provided no later than five days from the pre-negotiated deadline as set forth in the Master List of Reports, Appendix G.  Measurement will be on a client-specific basis.	<b>0.5 percent</b>
<b>TOTAL PREMIUM AT RISK</b>		<b>4.25 percent</b>

\*\*Performance guarantees will be reviewed prior to the end of each contract year beginning in May 2012.

\*Excludes commission. Delta Dental will not incur penalties for its failure to meet the terms of these guarantees if this failure is caused by fires, acts of public enemies, acts of God, civil disturbances, labor disputes, or by any similar act or event beyond the reasonable control of the client or Delta Dental

# APPENDIX F

(Business Associate Agreement)



## Business Associate Agreement

This Business Associate Agreement ("BA Agreement") is undertaken pursuant to the parties' performance of the Group Contract ("Contract") dated as of July 1, 2011 by and between the State of Delaware by and through the State Employee Benefits Committee ("Plan Sponsor"), on its own behalf and on behalf of the group health plan it sponsors for employees or other covered persons (the "Plan"), and Delta Dental of Delaware, Inc. ("Contractor"). This BA Agreement supersedes any previously executed Business Associate Agreements between the parties.

In the performance of services on behalf of the Plan pursuant to the Contract, and in order for Contractor to use, disclose or create certain information pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below), Contractor is a Business Associate of the Plan as that term is defined by the Health Insurance Portability and Accountability Act of 1996, including the modifications required under the American Recovery and Reinvestment Act of 2009 ("ARRA"), and its implementing Administrative Simplification regulations (45 C.F.R. §§142, 160, 162 and 164) ("HIPAA"). Accordingly, Contractor, the Plan and Plan Sponsor mutually agree to modify the Contract to incorporate the terms of this BA Agreement to comply with the requirements of HIPAA, and to include additional provisions that Plan Sponsor, the Plan and Contractor desire to have as part of the Contract.

Therefore, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

### I. DEFINITIONS

- A. Covered Entity. "Covered Entity" shall mean the Plan.
- B. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- C. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- D. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- E. Protected Health Information. "Protected Health Information" or "PHI" shall mean individually identifiable information created or received by a health care provider, health plan, employer or health care clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to the individual, or the past, present or future payment for provision of health care to the individual; (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. "PHI" shall be limited to the information created or received by Contractor from or on behalf of Covered Entity.
- F. Standard Transactions. "Standard Transaction(s)" shall mean a transaction that complies with the standards set forth at 45 C.F.R. §162.
- G. Designated Record Set. "Designated Record Set" shall have the meaning given to such term in 45 C.F.R. §164.501.

- H. **Covered Person.** "Covered Person" means the Covered Employee and the Covered Employee's legal spouse and/or unmarried dependent children as specified in the Plan or elsewhere in the Contract as Employee or Insured.
- I. **Summary Health Information.** "Summary Health Information" means information, which may be PHI, (1) that summarizes the claims history, claims expenses, or types of claims experienced by Covered Persons for whom a Plan Sponsor has provided health care benefits under the Plan, and (2) from which the identifiers specified in 45 CFR §164.514(b)(2)(i) have been deleted (except that the zip code information described in 45 CFR §164.514(b)(2)(i)(B) may be aggregated to the level of a five (5) digit zip code).
- J. **Electronic PHI.** "Electronic PHI" shall mean PHI that is subject to the Security Rule, limited to such information created, received, maintained, or transmitted electronically.
- K. **Security Incident.** "Security Incident" shall have the same meaning as "security incident" in 45 CFR 164.304, limited to any such incident involving Electronic PHI.
- L. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic PHI at 45 CFR §§160, 162 and 164.
- M. **Breach.** "Breach" shall mean an unauthorized acquisition, use or disclosure of protected health information (PHI) which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. For purposes of this definition, "compromises the security or privacy of such information" means poses a significant risk of financial, reputational or other harm to individual.
- N. **Secured PHI.** "Secured PHI" shall mean PHI when it is rendered unusable, unreadable, or indecipherable. Methodologies that render PHI secure are as follows:
- Encryption of electronic data per National Institute Standards and Technology guidelines
  - Destruction of electronic media as per NIST Standards
  - Destruction or shredding of paper, film or other hard copy media
- O. **Unsecured PHI.** "Unsecured PHI" is "unsecure" when it is not rendered unusable, unreadable or indecipherable to authorized individuals through the use of a technology or methodology specified by the Department of Health and Human Services.
- P. All other capitalized terms used in this BA Agreement shall have the meanings set forth in the applicable definitions under the HIPAA Privacy/Security Rule or the Standards for Electronic Transactions.

## II. **PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

- A. During the continuance of the Contract, Contractor will perform services necessary in connection with the Plan as outlined in the Contract. These services may include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined in 45 CFR §164.501. In connection with the services to be performed pursuant to the Contract, Contractor is permitted or required to use or disclose PHI it creates or receives for or from the Plan or to request PHI on the Plan's behalf as provided below.
- B. **Functions and Activities on the Plan's Behalf.** Unless otherwise limited in this BA Agreement, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Plan as specified in the Contract. Contractor may decide in its own reasonable discretion what uses and disclosures of PHI are required for it to

perform administrative services for the Plan as outlined in this BA Agreement and in the Contract as well as in accordance with the law.

1. Use for Contractor's Operations. Contractor may use PHI it creates or receives for or from the Plan for Contractor's proper management and administration or to carry out Contractor's legal responsibilities in connection with services to be provided under the Contract.
2. Disclosures for Contractor's Operations. Contractor may disclose the minimum necessary of such PHI for Contractor's proper management and administration or to carry out Contractor's legal responsibilities, but only if the following conditions are met:
  - a. The disclosure is required by law; or
  - b. Contractor obtains reasonable assurance, evidenced by written contract, from any person or organization to which Contractor will disclose such PHI that the person or organization will:
    - i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person or organization or as required by law; and
    - ii) Promptly notify Contractor (who will in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
3. Minimum Necessary Standard. In performing functions and activities in connection with the Contract, Contractor agrees to make reasonable efforts to use, disclose or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure or request.

**C. Data Aggregation Services.** The Plan agrees and recognizes that Contractor performs Data Aggregation services for the Plan, as defined by the HIPAA Privacy Rule. In the course of performing normal and customary services under the Contract, this data aggregation is an essential part of Contractor's work on behalf of the Plan under the Contract. Accordingly, Contractor can perform these data aggregation services in its own discretion, subject to any limitations imposed by the Contract. The term "Data Aggregation" is defined under the HIPAA Privacy Rule to mean, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a covered entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

**D. Prohibition on Unauthorized Use or Disclosure**

1. Non-permitted Use and Disclosure of PHI. Contractor will neither use nor disclose PHI it creates or receives for or from the Plan or from another Business Associate of the Plan, except as permitted or required by the Contract and this BA Agreement, as required by law, as otherwise permitted in writing by the Plan, as authorized by a Covered Person.
2. Disclosure to the Plan and the Plan Business Associates. To the extent permitted or required by the Contract and this BA Agreement, Contractor will

disclose PHI to other Business Associates of the Plan which the Plan has identified in a writing provided to Contractor. Contractor shall only disclose such PHI to such Business Associates, in their capacity as Business Associates of the Plan. Other than disclosures permitted by this Section II or as otherwise specifically identified in the Contract, Contractor will not disclose Covered Persons' PHI to the Plan or to a Business Associate of the Plan except as directed by the Plan in writing.

3. No Disclosure to Plan Sponsor. Contractor will not disclose any Covered Persons' PHI to Plan Sponsor, except as permitted by and in accordance with Section VIII or as otherwise specifically identified in the Contract.

### III. **OBLIGATIONS AND ACTIVITIES OF CONTRACTOR**

- A. Contractor will develop, document, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of, and to prevent non-permitted use or disclosure of, PHI created or received for or from the Plan.
- B. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this BA Agreement.
- C. Contractor agrees to report to Covered Entity, without unreasonable delay and in any event within 60 days, any use or disclosure of the PHI not provided for by this BA Agreement or otherwise in writing by the Plan. Contractor shall maintain a written log recording the date, name of Covered Person and description of PHI for all such unauthorized use or disclosure and shall submit such log to the Plan Sponsor upon request.
- D. Contractor will require that any agent, including a subcontractor, to whom it provides PHI as permitted by this BA Agreement (or as otherwise permitted with the Plan's prior written approval), agrees to the same restrictions and conditions that apply through this BA Agreement to Contractor with respect to such information.
- E. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, Covered Entity available to the Covered Entity, upon reasonable notice from the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- F. Contractor agrees to implement administrative, physical, and technical safeguards (as set forth in the Security Rule) that reasonably and appropriately protect the confidentiality and integrity (as set forth in the Security Rule), and the availability of Electronic PHI, if any, that Contractor creates, receives, maintains, or transmits electronically on behalf of Covered Entity. Contractor agrees to establish and maintain security measures sufficient to meet the safe harbor requirements established pursuant to ARRA by making data unreadable, indecipherable, and unusable upon receipt by an unauthorized person. Contractor agrees to provide adequate training to its staff concerning HIPAA and Contractors responsibilities under HIPAA.
- G. Contractor agrees to report to Covered Entity any Security Incident of which Contractor becomes aware.

- H. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect such information.
- I. Contractor agrees to directly provide notice to effected participants in the event of a Breach and to send both a written log of each Breach and copy of the notice to participants to the covered entity within 30 days of notification. Contractor agrees to notify participants in accordance with the guidelines and standards set forth by the Department of Health and Human Services under the American Reinvestment & Recovery Act and the HITECH Act.

#### IV. INDIVIDUAL RIGHTS OBLIGATIONS

- A. **Access.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will provide access to PHI as required by 45 CFR §164.524 on the Plan's behalf. Contractor will provide such access according to its own procedures for such access. Contractor represents that its procedures for such access comply with the requirements of 45 CFR §164.524. Such provision of access will not relieve the Plan of any additional and independent obligations to provide access where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will make available for inspection and obtaining copies by the Plan, or at the Plan's direction by the Covered Person (or the Covered Person's personal representative), any PHI about the Covered Person created or received for or from the Plan in Contractor's custody or control contained in a Designated Record Set, so that the Plan may meet its access obligations under 45 CFR §164.524. All fees related to this access, as determined by Contractor, shall be borne by Covered Persons seeking access to PHI.
- B. **Amendment.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will amend PHI as required by 45 CFR §164.526 on the Plan's behalf. Contractor will amend such PHI according to its own procedures for such amendment. Contractor represents that its procedures for such amendment comply with the requirements of 45 CFR §164.526. Such amendment will not relieve the Plan of any additional and independent obligations to amend PHI where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will amend such PHI contained in a Designated Record Set, in accordance with the requirements of 45 CFR §164.526. Upon receipt of written or electronic notice from the Plan, Contractor will amend or permit the Plan access to amend any portion of the PHI created or received for or from the Plan in Contractor's custody or control, so that the Plan may meet its amendment obligations under 45 CFR §164.526.
- C. **Disclosure Accounting.** So that the Plan may meet its disclosure accounting obligations under 45 CFR §164.528, Contractor and the Plan agree that, wherever feasible and to the extent that disclosures have been made by Contractor, Contractor will provide the accounting that is required under 45 CFR §164.528 on the Plan's behalf. Contractor will provide such accounting according to its own procedures for such accounting. Contractor represents that its procedures for such accounting comply with the requirements of 45 CFR §164.528. Such provision of disclosure accounting will not relieve the Plan of any additional and independent obligations to provide disclosure accounting where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will provide an accounting as set forth below.

1. Disclosure Tracking

Starting as of the Effective Date of the Contract, Contractor will record each disclosure of Covered Persons' PHI, which is not excepted from disclosure accounting, that Contractor makes to the Plan or to a third party.

The information about each disclosure that Contractor must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Contractor made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure.

For repetitive disclosures of Covered Persons' PHI that Contractor makes for a single purpose to the same person or entity (including the Plan), Contractor may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

2. Exceptions from Disclosure Tracking

Contractor is not required to record disclosure information or otherwise account for disclosures of PHI that this BA Agreement or the Plan in writing permits or requires: (i) for the purpose of the Plan's payment activities or health care operations, (ii) to the individual who is the subject of the PHI disclosed, or to that individual's personal representative; (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented; (x) for disclosures prior to April 14, 2003; or (xi) as otherwise excepted under 45 CFR §164.528.

3. Disclosure Tracking Time Periods

Contractor will have available for the Plan or for Covered Persons the Disclosure Information required for the six (6) years immediately preceding the date of the Plan's request for the Disclosure Information (except Contractor will not be required to have Disclosure Information for disclosures occurring before July 1, 2007).

**D. Right to Request Restrictions and Confidential Communications**

So that the Plan may meet its obligations to evaluate requests for restrictions and confidential communications in connection with the disclosure of PHI under 45 CFR §164.522, Contractor and the Plan agree that, wherever feasible and to the extent that communications are within the control of Contractor, Contractor will perform these evaluations on behalf of the Plan. Contractor will evaluate such requests according to its own procedures for such requests, and shall implement such appropriate operational steps as are required by its own procedures. Contractor represents that its procedures for evaluating such requests comply with the requirements of 45 CFR §164.522. Such evaluation will not relieve the Plan of any additional and independent obligations to evaluate restrictions or implement confidential communications where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will evaluate

requests for restrictions and requests for confidential communications, and will respond to these requests as appropriate under Contractor's procedures.

**V. OBLIGATIONS OF THE COVERED ENTITY**

- A. Covered Entity shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Contractor's permitted or required uses and disclosures.
- B. Covered Entity shall notify Contractor of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- C. Covered Entity shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity except as provided in this BA Agreement. In no event shall Covered Entity request Contractor to disclose to Covered Entity or agents of Covered Entity any PHI unless such disclosure is the minimum necessary disclosure that satisfies the request and that such disclosure is solely for the purpose of treatment, payment or plan operations.

**VI. BREACH OF PRIVACY OBLIGATIONS**

Without limiting the rights of the parties under the Contract, the Plan will have the right to terminate the Contract if Contractor has engaged in a pattern of activity or practice that constitutes a material breach or violation of Contractor's obligations regarding PHI under this BA Agreement and, on notice of such material breach or violation from the Plan, fails to take reasonable steps to cure the breach or end the violation.

If Contractor fails to cure the material breach or end the violation after the Plan's notice, the Plan may terminate the Contract by providing Contractor written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 60 days from this termination notice.

**A. Effect of Termination.**

**1. Return or Destruction Upon Contract End**

Upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will if feasible return to the Plan or destroy all PHI, in whatever form or medium (including in any electronic medium under Contractor's custody or control), that Contractor created or received for or from the Plan, including all copies of such PHI that allow identification of any Covered Person who is a subject of the PHI. Contractor will complete such return or destruction as promptly as practical after the effective date of the cancellation, termination, expiration or other conclusion of the Contract.

Following notice and good faith negotiation between Contractor and Plan Sponsor as to the reasonable costs, Plan Sponsor will reimburse Contractor's reasonable cost incurred in returning or destroying such PHI subject to the requisite appropriation by the Delaware General Assembly as required by Title 29 Delaware Code Chapter 65 and Article 8, Section III of the Delaware Constitution.

Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

19.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

19.4 Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

19.5 Contractor acknowledges that the State has an obligation to ensure that public funds are not used to subsidize private discrimination. Contractor recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, the State may declare Contractor in breach of the Agreement, terminate the Agreement, and designate Contractor as non-responsible.

19.6 Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

19.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

19.8 Contractor shall maintain all public records, as defined by 29 *Del. C.* §502(1), relating to this Agreement and its deliverables for the time and in the manner specified by the State Division of Archives, pursuant to the State Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, and upon seven (7) business days' prior written notice, authorized representatives of the State may inspect or audit Contractor' performance and records pertaining to this Agreement at the Contractor business office during normal business hours.

## **20. Insurance.**

20.1 Contractor shall maintain the following insurance during the term of this Agreement:



2. Disposition When Return or Destruction Not Feasible

The Plan recognizes that in many situations, particularly those involving data aggregation services performed by Contractor for the Plan and others, that it will be infeasible for Contractor to return or destroy PHI. Accordingly, where in Contractor's discretion such return or destruction is infeasible, for any such PHI, upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will limit its further use or disclosure of the PHI to those purposes that make their return to the Plan or destruction infeasible.

VII. PLAN SPONSOR'S PERFORMANCE OF PLAN ADMINISTRATION FUNCTIONS

- A. Communication of PHI. Except as specifically agreed upon by Contractor, the Plan and Plan Sponsor, and in compliance with any requirements imposed by this Section VIII, all disclosures of PHI from Contractor pursuant to the Contract shall be made to the Plan, except for disclosures related to enrollment or disenrollment in the Plan.
- B. Summary Health Information. Upon Plan Sponsor's written request for the purpose either to, (a) obtain premium bids for providing health insurance coverage for the Plan, or (b) modify, amend or terminate the Plan, Contractor is authorized to provide Summary Health Information regarding the Covered Persons in the Plan to Plan Sponsor.
- C. Plan Sponsor Representation. Plan Sponsor represents and warrants (A) that the Plan has been established and is maintained pursuant to law, (B) that the Plan provides for the allocation and delegation of responsibilities for the Plan, including the responsibilities assigned to Contractor under the Contract, (C) that the Plan includes or incorporates by reference the appropriate terms of the Contract and this BA Agreement, and (D) that the Plan incorporates the provisions required by 45 CFR §164.504 and the Plan Sponsor agrees to comply with the Plan as amended.
- D. Plan Sponsor's Certification. Contractor will not disclose Covered Persons' PHI to Plan Sponsor, unless and until the Plan authorizes Contractor in writing to disclose the minimum necessary Covered Persons' PHI to Plan Sponsor for the plan administration functions to be performed by Plan Sponsor as specified in the Plan.
- E. Contractor Reliance. Contractor may rely on Plan Sponsor's certification and the Plan's written authorization, and will have no obligation to verify that the Plan complies with the requirements of 45 CFR §164.504 or this BA Agreement or that Plan Sponsor is complying with the Plan.
- F. The Plan Amendment. Before the Plan will furnish Plan Sponsor's certification described above to Contractor, the Plan will ensure (1) that its Plan establishes the uses and disclosures of Covered Persons' PHI consistent with the requirements of 45 CFR §164 that Plan Sponsor will be permitted and required to make for the plan administration functions Plan Sponsor will perform for the Plan, and (2) that Plan Sponsor agrees to all the applicable conditions imposed by §164.504 on the use or disclosure of PHI.

VIII. MISCELLANEOUS

- A. Regulatory References. A reference in this BA Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

- B. **Survival.** The respective rights and obligations of Contractor under Section IV of this BA Agreement shall survive the termination of this BA Agreement.
- C. **Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule. Except to the extent specified by this BA Agreement, all of the terms and conditions of the Contract shall be and remain in full force and effect. In the event of any inconsistency or conflict between this BA Agreement and the Contract, the terms and provisions and conditions of this BA Agreement shall govern and control. Nothing express or implied in this BA Agreement and/or in the Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever. This BA Agreement shall be governed by and construed in accordance with the same internal laws that are applicable to the Contract.
- D. **Duration.** This BA Agreement will continue in full force and effect for as long as the Contract remains in full force and effect. This BA Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the Contract.
- E. **Term.** The Term of this BA Agreement shall be effective as of the date appearing on the signature page, and shall terminate when all of the PHI provided by Covered Entity to Contractor, or created or received by Contractor on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this BA Agreement.
- F. **Amendment.** Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of HIPAA applicable to this BA Agreement or to the Contract, this BA Agreement will automatically amend such that the obligations imposed on Plan Sponsor, the Plan and Contractor remain in compliance with such regulations, unless (1) Contractor elects to terminate the Contract by providing Plan Sponsor and the Plan notice of termination in accordance with the Contract at least thirty (30) days before the effective date of such final regulation or amendment to final regulations; or (2) Contractor notifies the Plan of its objections to any such amendment. In the event of such an objection, the parties will negotiate in good faith in connection with such changes or amendment to the relevant final regulation.
- G. **Conflicts.** The provisions of this BA Agreement will override and control any conflicting provision of the Contract or any previously executed Business Associate Agreement between the parties. All nonconflicting provisions of the Contract will remain in full force and effect.
- H. **Independent Relationship.** None of the provisions of this BA Agreement are intended to create, nor will they be deemed to create any relationship between the parties other than that of independent parties contracting with each other as independent parties solely for the purposes of effecting the provisions of this BA Agreement and the Contract.
- I. **Rights of Third Parties.** This BA Agreement is between Contractor and the Plan and the Plan Sponsor and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
- J. **Notices.** All notices and notifications under this BA Agreement shall be sent in writing by traceable carrier to the listed persons on behalf of Contractor, the Plan and Plan Sponsor at the addresses indicated on the signature page hereof, or such other address as a

party may indicate by at least ten (10) days' prior written notice to the other parties. Notices will be effective upon receipt.

- K. **Expenses.** Unless otherwise stated in this BA Agreement or the Contract, each party shall bear its own costs and expenses related to compliance with the above provisions. Any additional expenses incurred by Contractor in connection with services to be provided pursuant to this BA Agreement shall be included in the Contract.
- L. **Documentation.** All documentation that is required by this BA Agreement or by the HIPAA Privacy Rule must be retained by Contractor for six years from the date of creation or when it was last in effect, whichever is longer.

AGREED By and between the undersigned Parties this 18 day of July 2011.

**STATE OF DELAWARE  
OFFICE OF MANAGEMENT AND BUDGET**

By: [Signature]  
Brenda L. Lakeman  
Director, Statewide Benefits

Address for Notices:

Statewide Benefits Office, OMB  
Attention: Brenda L. Lakeman, Director  
The Duncan Center  
500 W. Loockerman Street, Suite 320  
Dover, DE 19904

**DELTA DENTAL OF DELAWARE, INC.**

By: [Signature]  
Gary D. Radine  
President

Address for Notices:

Delta Dental of Delaware, Inc.  
Attention: HIPAA Privacy Officer  
One Delta Drive  
Mechanicsburg, PA 17055

# APPENDIX G

(Master List of Reports)

Master List of Reports - Delta Dental Program  
FY12 (July 1, 2011 to June 30, 2012)

File Description	Direction	Frequency	Transport Method	Sending Contact	Receiving Contact	Target Date
Electronic enrollment file	PHRST to Delta	Weekly	State Secure Site (SFTP Server)	PHRST	Chris Gibbons	Every Saturday End of 2nd pay period of the month
Payroll file *	PHRST to SBO (Fran Nichols)	Monthly	State Secure Site (SFTP Server)	Fran Nichols	Chris Gibbons Fran Nichols (return to Delta within 30 days)	10 business days Last day of month**
Reconciliation	Delta to SBO (Fran Nichols)	Monthly	State Secure Site (SFTP Server)	Chris Gibbons	Fran Nichols	45 days after end of quarter
Age 26 - "Aging Out"	Delta to SBO (Fran Nichols)	Monthly	U.S. Mail	Carrie Schiavo	Larry Frank	45 days after end of quarter
Cost containment report	Delta to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Carrie Schiavo	Larry Frank	45 days after end of quarter
Payment report by procedure class	Delta to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Carrie Schiavo	Larry Frank	45 days after end of quarter
Utilization report by subscriber class	Delta to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Carrie Schiavo	Larry Frank	45 days after end of quarter
Claims paid report by participating status	Delta to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Carrie Schiavo	Larry Frank	45 days after end of quarter
Claims paid report	Delta to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Carrie Schiavo	Larry Frank	45 days after end of quarter

\* Used primarily for invoicing purposes: Non payroll groups pay their own directly.

\*\* Last day of the month three months preceding the month the dependent turns 26. (For example, age out in September = notified on June's report.)

# APPENDIX H

(Non-Covered Services Policy)

# Details of Delta Dental's Policy for Non-Covered Services

## **What is it?**

Delta Dental requires dentists who participate in Delta Dental's networks to accept Delta Dental's contracted fee for a service that is not specifically covered by an enrollee's dental plan so long as the dental plan provides benefits for an alternate treatment that can address the dental condition being treated.

## **What does this mean to Delta Dental's clients and enrollees?**

The bottom line: Delta Dental's non-covered services (NCS) policy can save enrollees money on some procedures at no extra charge to them or their groups.

## **When is this policy effective?**

This policy becomes effective in February 2011 as Delta Dental implements a new claims processing system among its individual companies nationwide.

## **Who does this policy apply to?**

It applies to all Delta Dental clients and their enrolled employees and dependents.

Some dental carriers have required their participating dentists to accept contracted fees for any service that is not a benefit covered by an enrollee's dental plan. Dentists have argued against this practice, saying a carrier should not be able to dictate dentists' fees for services that are not covered in any way by enrollees' dental plans. This has led at least 16 states to prohibit this practice while other states are considering enacting similar laws.

## **Why is this policy being implemented?**

Delta Dental's approach represents a middle-ground position that we believe is acceptable to regulators and that can be equitably applied on a nationwide basis. Delta Dental has always provided benefits for alternate services when appropriate, but dentists could charge enrollees for the difference between Delta Dental's payment and their actual fee. Under Delta Dental's new non-covered services policy, participating dentists can charge only Delta Dental's contracted or discounted fee when Delta Dental is providing benefits for an alternate procedure. This is how enrollees can save money on some procedures.

Following is a table that illustrates how non-covered services were handled before the new policy and how they are handled under the new policy:

<b>Category of Service</b>	<b>Fee Accepted by Participating Dentist</b>	<b>Fee Accepted by Participating Dentist</b>
	<b>Before NCS Policy</b>	<b>After NCS Policy</b>
<i>Procedures Exceeding Annual Maximum</i>	<i>Contracted Fee</i>	<i>Contracted Fee</i>
<i>Procedures Exceeding Frequency Limitation</i>	<i>Submitted Amount</i>	<i>Contracted Fee</i>
<i>Procedures Never Covered in Contract</i>	<i>Submitted Amount</i>	<i>Submitted Amount</i>
<i>Procedures with Waiting Period</i>	<i>Submitted Amount</i>	<i>Contracted Fee</i>
<i>When Benefit for Alternate Treatment</i>	<i>Submitted Amount</i>	<i>Contracted Fee</i>

**Contracted Fee** is the lesser of Delta Dental's Maximum Plan Allowance for a given procedure or the dentist's actual fee.

**Submitted Amount** is the dentist's actual charge for a service rendered.





## PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of July 1, 2011 ("Effective Date") by and between the State of Delaware (the "State"), Office of Management and Budget ("OMB"), and Dominion Dental Services, Inc., a Virginia corporation, with offices at 115 S. Union Street, Suite 300, Alexandria, VA 22314 ("Contractor").

WHEREAS, the State desires to obtain certain services to employees, pensioners and their dependants; and

WHEREAS, Contractor desires to provide such services to the State on the terms set forth below;

WHEREAS, the State and Contractor represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, the State and Contractor agree as follows:

### 1. Services.

1.1 Contractor shall perform for the State the services specified in the Appendices to this Agreement, attached hereto and made a part hereof:

- 1.1.1 Appendix A – Plan 605xs (DHMO) Description of Benefits and Member Copayments ("Plan")
- 1.1.2 Appendix B – Scope of Work
- 1.1.3 Appendix C – Performance Guarantees with Account Management Survey
- 1.1.4 Appendix D – Group Certificate of Coverage
- 1.1.5 Appendix E – Business Associate Agreement
- 1.1.6 Appendix F – List of Reports
- 1.1.7 Appendix G – Complaint Procedures

1.2 The parties agree that the election of coverage shall be a binding election for the plan year; July 1<sup>st</sup> to June 30<sup>th</sup>.

1.3 The DHMO rates for Plan 605xs are:

	<b>FY 12</b> <b>07/01/11 to 06/30/12</b>	<b>FY13</b> <b>07/01/12 to 06/30/13</b>	<b>FY14</b> <b>07/01/13 to 06/30/14</b>
<b>Employee</b>	<b>\$22.68</b>	<b>\$22.68</b>	<b>\$22.68</b>
<b>Employee &amp; Spouse</b>	<b>\$42.14</b>	<b>\$42.14</b>	<b>\$42.14</b>
<b>Employee &amp; Child(ren)</b>	<b>\$45.42</b>	<b>\$45.42</b>	<b>\$45.42</b>
<b>Family</b>	<b>\$61.66</b>	<b>\$61.66</b>	<b>\$61.66</b>

If the State chooses to renew this contract for the optional years of FY15, July 1, 2014 to June 30, 2015, and FY16, July 1, 2015 to June 30, 2016, Contractor agrees to a rate cap not to exceed five percent (5%) from the previous year.

1.4 For new members, any dental work deemed payable prior to July 1, 2011, including dentures, crown and bridge, root canal therapy, implants and orthodontia will be the responsibility of the previous carrier. If there are any discrepancies between the previous carrier and the Contractor's policy, the Contractor will work with the State on a case-by-case basis to assure the member is not unduly responsible for services that should be covered if there were no changes in carriers during the work in progress.

1.5 Adult orthodontia coverage is included in the Plan. Family members may choose different Participating Dentists. The Plan does not include pre-existing condition exclusions, waiting periods, maximum dollar limits or pre-authorization requirements except for emergency care services stated herein.

1.6 Any conflict or inconsistency between the provisions of the following documents shall be resolved by giving precedence to such documents in the following order: (a) this Agreement (including any amendments or modifications thereto); and (b) the State's request for proposals, dated August 31, 2011 ("RFP"). The RFP is specifically incorporated into this Agreement and made a part hereof. Notwithstanding the above, the parties hereto acknowledge that the benefits and services hereunder are provided pursuant and subject to a group master insurance policy and certificate, filed and approved by the Delaware Insurance Department, and any conflicts or inconsistencies among the documents concerning the benefits and services shall be resolved by reference to the group master insurance policy and certificate.

1.7 No services for which additional compensation may be charged by Contractor shall be furnished without the written authorization of the State. When the State desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify Contractor, who shall determine its ability to provide the services, then, if able to provide requested services, submit to the State a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by Contractor for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.8 Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

## **2. Payment for Services and Expenses.**

2.1 The term of the initial contract shall be from July 1, 2011, through June 30, 2013.

2.2 Contractor accepts the lag payroll payment schedule for members' premium payments. The State will present payments to the Contractor based on payroll/pensioner

premium deductions calculated by the State following the last check confirm for the fiscal payroll month. The State agrees to submit payment to the Contractor by the 21<sup>st</sup> day of the month following the month in which services may be rendered. If an employee misses a payment, no payment will be made by the State to the Contractor. Contractor agrees to accept retroactive terminations for up to sixty (60) days

2.3 The State shall have no obligation to pay premiums or fees to the Contractor for the performance of services of this employee-pay-all benefit. It is expressly understood that the work defined in the appendices to this Agreement must be completed by Contractor and it shall be Contractor's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed.

2.4 Any payments made by the State of Delaware will be by Automated Clearing House (ACH) as per its ACH processing procedures.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by Contractor. If an Appendix specifically provides for expense reimbursement, Contractor shall be reimbursed only for reasonable expenses incurred by Contractor in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies. Receipts must be provided.

2.6 The State is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 The State shall subtract from any payment made to Contractor all damages, costs and expenses caused by Contractor's negligence, resulting from or arising out of errors or omissions in Contractor's work products, which have not been previously paid to Contractor.

2.8 For this employee-pay-all benefit, the State shall produce its own monthly invoice for payroll groups and retirees. Reconciliation inquiries shall be submitted to:

State of Delaware  
Office of Management and Budget  
Statewide Benefits Office  
Attn: Fran Nichols  
500 W. Loockerman Street, Suite 320  
Dover, DE 19904

For non-payroll groups that are invoiced by the Contractor, invoices shall be submitted to:

State of Delaware  
Office of Management & Budget  
Financial Operations  
122 William Penn Street, Suite 101  
Dover, DE 19901

**3. Responsibilities of Contractor.**

3.1 Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by Contractor, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, Contractor shall follow practices consistent with generally accepted professional and technical standards. Contractor shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the requirements of the RFP and the standards of the OMB. Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's failure to ensure compliance with RFP requirements and OMB standards.

3.2 It shall be the duty of the Contractor to assure that all products and services are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. Contractor will not produce a work product that violates or infringes on any copyright or patent rights. Contractor shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by the State of any products or services furnished by Contractor shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of its work. The State's review, approval, acceptance, or payment for any of Contractor's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's performance or failure to perform under this Agreement.

3.4 Contractor shall provide a written report no later than forty-five (45) days following the close of each quarter which shall describe any judgment, settlement or pending litigation involving Contractor in the most recent quarter that could result in judgments or settlements in excess of One Hundred Thousand Dollars (\$100,000).

3.5 Contractor shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by Contractor's associates and employees under the personal supervision of the Project Manager. The positions anticipated include:

<u>Project</u>	<u>Manager</u>	<u>Title</u>	<u>% of Project Involvement</u>
Implementation	Wayne Kee	Manager of Group Service	100%
Account Mgt	Wayne Kee	Manager of Group Service	100%
Operational Service and Client Resources	Wayne Kee	Manager of Group Service	100%

3.6 Designation of persons for each position is subject to review and approval by the State. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, Contractor will notify the State immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement staff persons are subject to review and approval by the State. If, after notice of deficiency by the State, Contractor fails to make a required replacement within 30 days, the State may terminate this Agreement for default. Upon receipt of written notice from the State that an employee of Contractor is unsuitable to the State for good cause, Contractor shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.7 Contractor shall furnish to the State's designated representative copies of all correspondence exclusive to this contract to regulatory agencies for review prior to mailing such correspondence.

3.8 Contractor agrees that its officers and employees will cooperate with the State in the performance of services under this Agreement and will be available for consultation with the State at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.9 Contractor has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by the State or any other political subdivision of the State.

3.10 Contractor will not use the State's name, either express or implied, in any of its advertising or sales materials without the State's express written consent.

3.11 The rights and remedies of the State provided for in this Agreement are in addition to any other rights and remedies provided by law.

**4. Time Schedule.**

4.1 As an incumbent dental benefit provider to the State, the Contractor agrees to perform the implementation tasks as directed by the State for a seamless transition to the contractual term beginning July 1, 2011 (FY12). As outlined in the Performance Guarantee Appendix, Contractor agrees to abide by deadlines set by the State for the necessary communication materials of the Open Enrollment period and benefit coverage beginning July 1, 2011.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by the State.

**5. State Responsibilities.**

5.1 In connection with Contractor's provision of the Services, the State shall perform those tasks and fulfill those responsibilities specified in the appropriate Appendices.

5.2 The State agrees that its officers and employees will cooperate with Contractor in the performance of services under this Agreement and will be available for consultation with Contractor at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by Contractor under this Agreement shall be subject to review for compliance with the terms of this Agreement by the State's designated representatives. The State representatives may delegate any or all responsibilities under the Agreement to appropriate staff members. The review comments of the State's designated representatives may be reported in writing as needed to Contractor. It is understood that the State's representatives' review comments do not relieve Contractor from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

**6. Work Product.**

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by Contractor for the State relating to the services to be performed hereunder shall become the property of the State and shall be delivered to the State's designated representative upon completion or termination of this Agreement, whichever comes first. Contractor shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by the State. The State shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 Contractor shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

**7. Confidential Information.**

To the extent permissible under 29 *Del. C.* §10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

**8. Warranty.**

8.1 Contractor warrants that its services will be performed in a good and workmanlike manner. Contractor agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by Contractor for the State in connection with the provision of the Services, Contractor shall pass through or assign to the State the rights Contractor obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

**9. Indemnification.**

9.1 Contractor shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Contractor, its agents or employees, or (B) Contractor's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) Contractor shall have been notified in writing by the State of any notice of such claim; and (ii) Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 Contractor shall indemnify and hold harmless the State of Delaware, its agents and employees, from any and all liability, suits, actions or claims, including any claims or expenses with respect to the resolution of any data security breaches/ or incidents, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the Contractor, its agents or employees, or (B) Contractor's breach of this Agreement, provided as to (A) or (B) that (i) Contractor shall have been notified promptly in writing by the State of Delaware of any notice of such claim; and (ii) Contractor shall have control of the defense of any action on such claim and all negotiations for its settlement or compromise

**10. Employees.**

10.1 Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Contractor in the performance of the services hereunder; provided, however, that it will,



subject to scheduling and staffing considerations, attempt to honor the State's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

10.3 Possession of a Security Clearance, as issued by the State Department of Public Safety, may be required of any employee of Contractor who will be assigned to this project.

## **11. Independent Contractor.**

11.1 It is understood that in the performance of the services herein provided for, Contractor shall be, and is, an independent contractor, and is not an agent or employee of the State and shall furnish such services in its own manner and method except as required by this Agreement. Contractor shall be solely responsible for, and shall indemnify, defend and save the State harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 Contractor acknowledges that Contractor and any subcontractors, agents or employees employed by Contractor shall not, under any circumstances, be considered employees of the State, and that they shall not be entitled to any of the benefits or rights afforded employees of the State, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. The State will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of the State or any of its officers, employees or other agents.

11.3 Contractor shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, Contractor has no authority to bind or commit the State. Nothing herein shall be deemed or construed to create a joint venture, partnership, and fiduciary or agency relationship between the parties for any purpose.

## **12. Termination.**

12.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

12.2 This Agreement may be terminated in whole or in part by the State for material breach of this agreement, but only after Contractor is given not less than 30 calendar days written notice of intent to terminate.

12.3 If termination for default is effected by the State, the State will pay Contractor that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to Contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the State by reason of Contractor's default, and
- c. Upon termination for default, the State may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event Contractor shall cease conducting business, the State shall have the right to make an unsolicited offer of employment to any employees of Contractor assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

12.4 The rights and remedies of the State and Contractor provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

12.5 Gratuities.

12.5.1 The State may, by written notice to Contractor, terminate this Agreement if it is found after notice and hearing by the State that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor or any agent or representative of Contractor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

12.5.2 In the event this Agreement is terminated as provided in 12.5.1 hereof, the State shall be entitled to pursue the same remedies against Contractor it could pursue in the event of a breach of this Agreement by Contractor.

12.5.3 The rights and remedies of the State provided in Section 12.4 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**13. Severability.**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

**14. Assignment; Subcontracts.**

14.1 Any attempt by Contractor to assign or otherwise transfer any interest in this Agreement without the prior written consent of the State shall be void. Such consent shall not be unreasonably withheld.

14.2 The State agrees that Contractor may subcontract dental services to participating dentists practicing outside the states of Pennsylvania, Delaware, New Jersey, and Virginia to Dentemax. Services other than graphics, printing, and mailing specified by this Agreement shall not be subcontracted by Contractor without prior written approval of the State.

14.3 Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve Contractor of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

14.4 Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under this Agreement by Contractor, its subcontractor or its sub-subcontractor.

14.5 The compensation due shall not be affected by the State's approval of the Contractor's request to subcontract.

**15. Force Majeure.**

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

**16. Non-Appropriation of Funds.**

16.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated the State may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the

end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

16.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and the State's obligations under it shall be extinguished at the end of the fiscal year in which the State fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

**17. State of Delaware Business License.**

Contractor and all subcontractors represent that they are properly licensed and authorized to transact business in the State as provided in 30 *Del. C.* §2502.

**18. Complete Agreement.**

18.1 This agreement and its Appendices shall constitute the entire agreement between the State and Contractor with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

18.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

18.3 Contractor may not order any product requiring a purchase order prior to the State's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**19. Miscellaneous Provisions.**

19.1 In performance of this Agreement, Contractor shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Contractor shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

19.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, and
- B. Comprehensive General Liability - \$5,000,000.00 per person/\$20,000,000 per occurrence, and
- C. Professional Liability - \$5,000,000.00 per person/\$5,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

20.2 Contractor shall provide forty-five (45) days written notice of cancellation or material change of any policies.

20.3 Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State.

20.4 In no event shall the State be named as an additional insured on any policy required under this agreement.

**21. Assignment of Antitrust Claims.**

As consideration for the award and execution of this contract by the State, Contractor hereby grants, conveys, sells, assigns, and transfers to the State all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State, relating to the particular goods or services purchased or acquired by the State pursuant to this contract.

**22. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State, except where Federal Law has precedence. Contractor consents to the exclusive jurisdiction and venue of the courts of the State.

**23. Notices.**

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO State at:

Ms. Brenda Lakeman, Director  
State of Delaware, OMB  
Statewide Benefits  
Duncan Center, Suite 320  
500 W. Loockerman Street  
Dover, DE 19904

TO Contractor at:

Mitch McGlynn, President  
Dominion Dental Services, Inc.  
115 S. Union Street, Suite 300  
Alexandria, VA 22314

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE  
OFFICE OF MANAGEMENT AND BUDGET**

By: \_\_\_\_\_  
Name: Brenda L. Lakeman  
Title: Director, Statewide Benefits

**DOMINION DENTAL SERVICES, INC.**

By: \_\_\_\_\_  
Name: Mitch McGlynn  
Title: President

## APPENDIX A

## Description of Benefits & Member Copayments

ADA CODE	BENEFIT	MEMBER COPAYMENT (\$)
<b>DIAGNOSTIC / PREVENTIVE / ADJUNCTIVE</b>		
D9439	Office visit.....	\$10
D0120	Periodic oral evaluation.....	No Charge
D0140	Limited oral evaluation - problem focused.....	No Charge
D0150	Comprehensive oral evaluation.....	No Charge
D0160	Detailed and ext. oral eval. - problem focused.....	No Charge
D0170	Re-evaluation - limited, problem focused (established patient; not postoperative visit).....	No Charge
D0210	Intraoral complete series (including bitewings).....	26
D0220	Intraoral - periapical first film.....	No Charge
D0230	Intraoral - periapical each additional film.....	No Charge
D0240	Intraoral - occlusal film.....	No Charge
D0250/60	Extraoral - first and each additional film.....	No Charge
D0270/72/74	Bitewing x-ray - one, two or four film(s).....	No Charge
D0277	Vertical bitewings - seven to eight films.....	No Charge
D0330	Panoramic film.....	30
D0460	Pulp vitality tests.....	No Charge
D0470	Diagnostic casts (not in conj. with Ortho).....	No Charge
D1110	Prophylaxis - teeth cleaning; adult (one per six months, per member - one additional cleaning is covered at no charge during pregnancy and for diabetics).....	No Charge
D1120	Prophylaxis - teeth cleaning; child (one per six months, per member - one additional cleaning is covered at no charge during pregnancy and for diabetics).....	No Charge
D1201	Topical fluoride with prophylaxis (child).....	No Charge
D1203	Topical fluoride without prophylaxis (child).....	No Charge
D1310	Nutritional counseling for control and treatment of dental disease.....	No Charge
D1320/30	Oral hygiene instructions.....	No Charge
D1351	Sealant - per tooth (up to 14 years of age).....	18
D9110	Palliative (emergency) treatment.....	40
D9210/15	Local anesthesia.....	No Charge
D9211	Regional block anesthesia.....	No Charge
D9212	Trigeminal division block anesthesia.....	No Charge
D9230	Analgesia, anxiolysis, inhalation of nitrous oxide.....	35
D9310	Consultation (diagnostic service provided by dentist or specialist other than practitioner providing treatment).....	39
D9910	Application of desensitizing medicament.....	29
D9930	Emergency visit during office hours.....	40
D9990	Broken office appointment - per 1/4 hour.....	23
<b>SPACE MAINTAINERS</b>		
D1510/20	Space maintainer fixed/removable - unilateral.....	129
D1515/25	Space maintainer fixed/removable - bilateral.....	174
D1550	Recementation of space maintainer.....	31
<b>RESTORATIVE DENTISTRY (FILLINGS)</b>		
<b>AMALGAM RESTORATIONS (Silver)</b>		
D2140	Amalgam - one surface, primary or permanent.....	33
D2150	Amalgam - two surfaces, primary or permanent.....	41
D2160	Amalgam - three surfaces, primary or permanent.....	52
D2161	Amalgam - four or more surfaces, primary or permanent.....	62
<b>RESIN/COMPOSITE RESTORATIONS (Tooth Colored)</b>		
D2330	Resin - one surface, anterior.....	61
D2331	Resin - two surfaces, anterior.....	73
D2332	Resin - three surfaces, anterior.....	86
D2335	Resin - four or more surfaces, anterior.....	104
D2391	Resin - one surface, posterior.....	65
D2392	Resin - two surfaces, posterior.....	76
D2393	Resin - three surfaces, posterior.....	89
D2394	Resin - four or more surfaces, posterior.....	107
D2940	Sedative filling.....	35
D2951	Pin retention - per tooth in addition to restoration.....	20
D3110/20	Pulp cap direct/indirect (excl. final rest).....	24
<b>CROWN &amp; BRIDGE*</b>		
D2390	Resin based composite crown, anterior.....	168
D2510	Inlay - metallic - one surface.....	390
D2520	Inlay - metallic - two surfaces.....	390
D2530	Inlay - metallic - three or more surfaces.....	407
D2542	Onlay - metallic - two surfaces.....	423
D2543	Onlay - metallic - three surfaces.....	511

ADA CODE	BENEFIT	MEMBER COPAYMENT (\$)
D2544	Onlay - metallic - four or more surfaces.....	511
D2610	Inlay - porcelain/ceramic - one surface.....	\$347
D2620	Inlay - porcelain/ceramic - two surfaces.....	376
D2630	Inlay - porcelain/ceramic - three surfaces.....	400
D2642	Onlay - porcelain/ceramic - two surfaces.....	416
D2643	Onlay - porcelain/ceramic - three surfaces.....	432
D2644	Onlay - porcelain/ceramic - four or more surfaces.....	432
D2650	Inlay - resin-based composite - one surface.....	403
D2651	Inlay - resin-based composite - two surfaces.....	403
D2652	Inlay - resin-based composite - three or more surfaces.....	403
D2662	Onlay - resin-based composite - two surfaces.....	407
D2663	Onlay - resin-based composite - three surfaces.....	407
D2664	Onlay - resin-based composite - four or more surfaces.....	407
D2710	Crown - resin - lab.....	246
D2712	Crown - 3/4 resin-based composite (excluding veneers).....	450
D2720/21/22	Crown - resin with metal.....	470
D2740	Crown - porcelain/ceramic substrate.....	508
D2750/51/52	Crown - porcelain fused to metal.....	470
D2780/81/82	Crown - 3/4 cast with metal.....	307
D2783	Crown - 3/4 porcelain/ceramic.....	446
D2790/91/92	Crown - full cast metal.....	457
D2793	Crown - prefabricated stainless steel.....	122
D2910/20	Recentral inlay/crown per unit.....	38
D2930	Crown - prefabricated stainless steel - primary tooth.....	99
D2931	Crown - prefabricated stainless steel - permanent tooth.....	112
D2932	Crown - prefabricated resin.....	128
D2950	Core buildup, including any pins.....	113
D2952	Cast post & core in addition to crown.....	171
D2954	Prefabricated post & core in addition to crown.....	140
D2955	Post removal (not in conj. w/ endo therapy).....	95
D2970	Temporary crown (w/ perm. crown).....	No Charge
D2980	Crown repair, by report.....	88
<b>PROSTHETICS (DENTURES)</b>		
D5110/20	Complete upper/lower denture.....	577
D5130/40	Immediate upper/lower denture.....	615
D5211/12	Upper/lower, resin base partial denture (including any conventional clasps, rests & teeth).....	533
D5213/14	Upper/lower, cast base partial denture with resin base (incl. conventional clasps, rests & teeth).....	627
D5281	Removable unilateral partial - one piece cast metal (incl. clasps and teeth).....	345
D5410/11	Adjust complete denture, upper/lower.....	30
D5421/22	Adjust partial denture, upper/lower.....	30
D5510/5610	Repair denture base (complete or resin).....	73
D5520	Replace missing/broken teeth (each tooth).....	73
D5620	Repair cast framework.....	73
D5630/60	Clasp replaced, repaired or added.....	97
D5640	Replace broken tooth, per tooth.....	73
D5650	Add tooth to existing partial denture.....	73
D5670/71	Replace all teeth and acrylic on cast metal framework, upper/lower.....	228
D5710/11	Rebase complete denture, upper/lower.....	220
D5720/21	Rebase partial denture, upper/lower.....	220
D5730/31	Reline complete denture, upper/lower (chairside).....	132
D5740/41	Reline compl/partial upper/lower (chairside).....	132
D5750/51	Reline complete upper/lower: lab.....	186
D5760/61	Reline upper/lower partial: lab.....	186
D5810/11	Interim complete denture upper/lower.....	289
D5820/21	Interim partial denture upper/lower.....	289
D5850/51	Tissue conditioning, upper/lower.....	65
<b>BRIDGE &amp; PONTICS*</b>		
D6210/11/12	Pontic - metal.....	457
D6240/41/42	Pontic - porcelain fused to metal.....	470
D6245	Pontic - porcelain/ceramic.....	505
D6250/51/52	Pontic - resin with metal.....	470
D6545	Retainer - cast metal for a resin bonded fixed.....	221
D6548	Retainer - porcelain/ceramic for resin bonded fixed prosthesis.....	346
D6600	Inlay - porcelain/ceramic, two surfaces.....	192
D6601	Inlay - porcelain/ceramic, three or more surfaces.....	205
D6602	Inlay - cast high noble metal, two surfaces.....	212



# Plan 605xsd

ADA CODE	BENEFIT	MEMBER COPAYMENT (\$)
D6603	Inlay - cast high noble metal, three or more surfaces .....	250
D6604	Inlay - cast predom. base metal, two surfaces .....	\$137
D6605	Inlay - cast predom. base metal, three or more surfaces .....	174
D6606	Inlay - cast noble metal, two surfaces .....	172
D6607	Inlay - cast noble metal, three or more surfaces .....	187
D6608	Onlay - porcelain/ceramic, two surfaces .....	210
D6609	Onlay - porcelain/ceramic, three or more surfaces .....	220
D6610	Onlay - cast high noble metal, two surfaces .....	250
D6611	Onlay - cast high noble metal, three or more surfaces .....	268
D6612	Onlay - cast predom. base metal, two surfaces .....	174
D6613	Onlay - cast predom. base metal, three or more surfaces .....	192
D6614	Onlay - cast noble metal, two surfaces .....	187
D6615	Onlay - cast noble metal, three or more surfaces .....	200
D6720/21/22	Crown - resin w/ metal .....	470
D6740	Crown - porcelain/ceramic .....	505
D6750/51/52	Crown - porcelain to metal .....	470
D6780	Crown - 3/4 cast high noble metal .....	457
D6781	Crown - 3/4 cast predominantly base metal .....	428
D6782	Crown - 3/4 cast noble metal .....	438
D6783	Crown - 3/4 porcelain/ceramic .....	447
D6790/91/92	Crown - full cast metal .....	457
D6930	Recement fixed partial bridge .....	62
D6970/71	Cast post & core .....	171
D6972	Prefabricated post & core - in addition to bridge retainer .....	140
D6973	Core buildup for retainer, including any pins .....	113
D6975	Coping - metal .....	283
D6976	Each additional cast post - same tooth .....	113
D6977	Each additional prefabricated post - same tooth .....	52
D6980	Fixed partial denture repair, by report .....	149
<b>ENDODONTICS<sup>1</sup></b>		
D3220	Therapeutic pulpotomy (excl. final rest) .....	70/93
D3221	Pulpal debridement, primary and perm. teeth .....	75/85
D3310	Anterior (excl. final rest) .....	282/447
D3320	Bicuspid (excl. final rest) .....	343/520
D3330	Molar (excl. final rest) .....	423/610
D3333	Internal root repair of perforation defects .....	83/107
D3346	Re-treatment - anterior .....	309/396
D3347	Re-treatment - bicuspid .....	363/424
D3348	Re-treatment - molar .....	457/452
D3410	Apicoectomy/periradicular surgery, anterior .....	269/283
D3421	Apicoectomy - bicuspid (first root) .....	289/362
D3425	Apicoectomy - molar (first root) .....	329/362
D3426	Apicoectomy - (each additional root) .....	128/95
D3430	Retrograde filling - per root .....	98/119
D3450	Root amputation - per root .....	175/176
D3920	Hemisection (including any root removal) .....	175/198
D3950	Canal prep/fit of preformed dowel or post .....	108/95
<b>PERIODONTICS<sup>1</sup></b>		
D0180	Comprehensive periodontal evaluation - new or established patient - not in conjunction with D0150, limited to once per 18 months .....	36/35
D4210	Gingivectomy/gingivoplasty - four or more teeth per quad .....	242/332
D4211	Gingivectomy/gingivoplasty one-to-three teeth per quad .....	86/163
D4240	Gingival flap procedure, including root planing, per quad .....	296/407
D4241	Gingival flap procedure, including root planing - one-to-three teeth, per quadrant .....	82/339
D4260	Osseous (bone) surgery - four or more per quad .....	444/396
D4261	Osseous (bone) surgery - one - three teeth per quad .....	329/356
D4268	Surgical revision procedure, per tooth .....	301/339
D4274	Distal or proximal wedge procedure .....	282/367
D4341	Perio scaling & root planing four or more per quad .....	96/226
D4342	Perio scaling & root planing one-to-three teeth per quad .....	52/147
D4355	Full mouth debridement .....	70/181
D4381	Localized delivery of chemotherapeutic agents via a controlled release vehicle into diseased crevicular tissue, per tooth, by report .....	82/63
D4910	Periodontal maintenance .....	60/124
D9940	Occlusal guard by report .....	282/254
D9950	Occlusion analysis - mounted case .....	76
D9951	Occlusal adjustment, limited .....	58/69
D9952	Occlusal adjustment, complete .....	242/249
<b>ORAL SURGERY<sup>1</sup></b>		
D7111	Extraction, coronal remnants - deciduous tooth .....	40/57
D7140	Extraction - erupted tooth or exposed root .....	57/77
D7210	Surgical extraction - erupted tooth .....	115/119

ADA CODE	BENEFIT	MEMBER COPAYMENT (\$)
D7220	Removal of impacted tooth - soft tissue .....	\$130/129
D7230	Removal of impacted tooth - partially bony .....	171/220
D7240	Removal of impacted tooth - completely bony .....	206/299
D7241	Removal of impacted tooth - completely bony, with unusual surgical complications .....	164/333
D7250	Removal of residual tooth roots .....	123/114
D7270	Tooth reimplantation and/or stabilization of accidentally evulsed or displaced tooth and/or alveolus .....	191/177
D7280	Surgical access of an unerupted tooth .....	100/141
D7291	Transeptal fibrotomy/supra crestal fibrotomy, by report .....	38/90
D7310/20	Alveoloplasty per quadrant .....	122/147
D7510	Incision/drainage of abscess, soft tissue .....	82/102
D7960	Frenulectomy (frenectomy or frenotomy) .....	232/226
<sup>1</sup> Specialty care is provided at the listed copayment whether performed by a participating general dentist or a participating specialist. Referrals to a specialist must be made by the member's participating general dentist. If the listed procedure contains a slash (/), the second listed fee represents the copayment due to the specialist after referral.		
<b>ORTHODONTICS<sup>1</sup></b>		
D8660	Pre-orthodontic treatment visit, records and models .....	413
D8070	Comprehensive orthodontic treatment of the transitional dentition .....	3,304
D8080	Comprehensive orthodontic treatment of adolescent dentition .....	3,422
D8090	Comprehensive orthodontic treatment of adult dentition .....	3,658
D8670	Periodic orthodontic visit (beyond 24 months of treatment) per month charge .....	118
D8680	Orthodontic retention (removal of appliances, construction and placement of retainer(s)) .....	413
<sup>2</sup> Phase I Treatment (D8010 - D8050) is provided at a 15% reduction from the orthodontist's UCR fees. See limitation #18 for additional coverage exclusions.		
<b>Plan Exclusions</b>		
1. Services for injuries or conditions which are covered under worker's compensation and employer's liability laws. Services which are provided without cost to Subscribers by any federal, state, municipal, county or other subdivision's program (with the exception of Medicaid).		
2. Services which, in the opinion of the attending dentist, are not necessary for the patient's dental health.		
3. Cosmetic, elective or aesthetic dentistry.		
4. Oral surgery requiring the setting of fractures or dislocations.		
5. Services with respect to malignancies, cysts or neoplasms, hereditary, congenital, anodontic, mandibular prognathism or development malformations where, in the sole discretion of the Participating Dentist, such services should not be performed in a dental office.		
6. Dispensing of drugs.		
7. Hospitalization for any dental procedure.		
8. Treatment required for conditions resulting from major disaster, epidemic or war, including declared or undeclared war or acts of war.		
9. Replacement due to loss or theft of prosthetic appliance.		
10. General anesthesia and sedation.		
11. Services that cannot be performed because of the general health of the patient.		
12. Implantation and related restorative procedures.		
13. Unlisted procedures.		
14. Services obtained outside of the dental office in which enrolled and that are not pre-authorized by such office or Dominion Dental Services, Inc. (with the exception of out-of-area emergency dental services).		
15. Services related to the treatment of TMD (Temporal Mandibular Disorder).		
16. Services performed by a Plan Specialist without a referral from a Participating General Dentist (with the exception of Orthodontics).		
17. Elective surgery including, but not limited to, extraction of non-pathologic, asymptomatic impacted teeth.		
18. The Invisalign system and similar specialized braces are not a covered benefit. Patient copayments will apply to the routine orthodontic appliance portion of services only. Additional costs incurred will become the patient's responsibility.		
<b>Plan Limitations</b>		
1. Replacement of a bridge, crown or denture within five (5) years after the date it was originally installed.		
2. Replacement of filling within two (2) years after original date of placement.		
3. Teeth cleaning (prophylaxis) at intervals of less than six (6) months.		
4. Crown and bridge fees apply to treatment involving five or fewer units when presented in a single treatment plan. Additional crown or bridge units, beginning with the sixth unit, are available at the provider's Usual, Customary, and Reasonable (UCR) fee, minus 25%.		
5. Full mouth x-rays or panoramic film - one set every three years.		
6. Retreatment of root canal within two (2) years of the original treatment.		
7. Limit 4381 to one benefit per tooth for three teeth per quadrant or a total of 12 teeth for all four quadrants per twelve (12) months. Must have pocket depths of five (5) millimeters or greater.		
Only current ADA CDT codes are considered valid by Dominion Dental Services, Inc. Current Dental Terminology © American Dental Association.		

## APPENDIX B

## Appendix B

### Scope of Work:

1. Contractor agrees to execute a Business Associate Agreement before the effective date of this contract.
2. The reports identified in Appendix F, List of Reports, along with *ad hoc* reports, are available at no cost to the State.
3. The Parties agree that the Five Thousand Dollars (\$5,000) implementation credit will be used by the Contractor to partially offset the cost of printing and mailing a postcard for the Preventive Incentive program to all enrollees after July 1, 2011. The balance of the cost will be absorbed by the Contractor.
4. In addition to the covered cleanings per plan year, the Contractor will provide once per plan year a cleaning at no cost to pregnant members and members with a diagnosis of diabetes. This benefit is included in the covered services without an increase in the premiums.
5. The Contractor includes the "Dominion Preventive Incentive" program in their covered services without an increase in premiums. Members may receive their two cleanings within thirteen (13) months to qualify instead of twelve (12) months, moving the expiration date from July 1 to August 1. The free cleaning for pregnant and diabetic members and described in Paragraph #4 above, is not applicable.
6. Contractor shall provide a link to a webpage that is personalized for the State of Delaware. The page will include a Find A Dentist tool that is updated daily as changes occur. For Open Enrollment, by May 1, 2011, Dominion agrees to contact all Delaware providers to determine their open or closed panel status and post that on the website. After July 1, 2011, Contractor will notify the State within twenty-four (24) hours of network changes for established patients and provide the open and closed panel status of Participating Providers on its website.
7. The Contractor agrees to electronically retrieve from multiple State servers, paper enrollments, and files from non-payroll groups on a regular basis eligibility, enrollment, and subscriber database information as set forth in the RFP. The State acknowledges that each file feed will require a separate plan and plan identification number in the Dominion Dental system.
8. No later than July 1, 2011, an employee or pensioner identification number or some other identifying number will be used instead of social security numbers on all electronic files and reporting for the State of Delaware active and pensioner groups. A mutually agreed upon transition process will occur prior to July 1 to avoid any conversion discrepancies or duplications.

## APPENDIX C

Statewide Benefits Office FY12 (July 1, 2011 to June 30, 2012)  
 Dominion Dental Performance Guarantees Report, Program Lead - Larry Frank

APPENDIX C (with Account Management Survey)											
Performance Guarantee	Standard	Penalty	Qtr 1	Comments by	Qtr 2	Comments by	Qtr 3	Comments by	Qtr 4	Comments by	Comments
Delivery of all tangibles: ID cards, SPDs, Certificates	99.5% of all ID cards; SPDs; Certificates will be issued within 10 working days of receipt of enrollment information	0.25%									
Implementation Satisfaction	Satisfactory number of Benefit Representative Meetings; Health Fairs; literature for Open Enrollment Booklets and related documents; Satisfactory completion of items on implementation timeline	0.25%									
Clean claims processed within 15 calendar days of Receipt	At 90.0% Accuracy (based on Book of Business)	1%									
Percentage of Dollars Paid Accurately (Financial Accuracy)	At 98% Accuracy (based on Book of Business)	0.50%									
Percentage of Clean Claims Processed Accurately Without Payment or Non-Payment Errors (Processing Accuracy)	At 97.0% Accuracy (based on Book of Business)	0.25%									
Maintain current network and recruit new DHMO offices on a best effort basis	Provider to report on total number of Delaware providers and recruitment status on quarterly basis at the Quarterly Meeting.	1%									

Indicate if the Performance Guarantee is Met or Not Met Each Quarter (if applicable) with a Y or N. If N, comments should be inserted in the Comments Column

Statewide Benefits Office FY12 (July 1, 2011 to June 30, 2012)  
 Dominion Dental Performance Guarantees Report, Program Lead - Larry Frank

Telephone Response Time	95% of calls responded to within 45 seconds; less than a 5% abandonment rate (based on Book of Business)	0.75%																		
State's Overall Satisfaction	Score of 20% to 25% on Account Management Team Survey performed by SBO staff. Draft survey will be mutually agreed upon.	2%																		
Employee Satisfaction Survey	90% "favorable" responses on Member Satisfaction Surveys based upon a mutually agreed upon Member Satisfaction Survey	1%																		
Timely Reporting	Billing and any other required report will be provided no later than five working days from pre-negotiated deadline. (See Master List of Reports)	1%																		
Account Management Meetings	Attendance at Quarterly Meetings, Scheduled Calls, SEBC Meetings, and Ad Hoc Meetings as requested by SBO.	1%																		
Total % of Fees at Risk		9%																		

Performance guarantee results are measured on the State of Delaware's account experience unless otherwise noted. All performance guarantees shall be reported on a quarterly basis and provided no later than 45 days following the close of each quarter. Quarterly results will be averaged on an annual basis, and payments, if any, shall be made annually within six (6) months of the end of the plan year.

Indicate if the Performance Guarantee is Met or Not Met Each Quarter (if applicable) with a Y or N. If N, comments should be inserted in the Comments Column

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*Account Management Team Survey*

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*Dominion Dental Services, Inc.*

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**Account Management Team Survey – Dominion Dental Services**

For Reporting Period: FY \_\_\_\_ Quarter : \_\_\_\_  
Completed by: SBO Vendor Management Team

The Vendor Management Team of the Statewide Benefits Office is using this tool to evaluate the Account Management Team of Dominion Dental Services in serving as a provider of dental services to the employees and pensioners of the State of Delaware.

**Knowledge:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
1. Understands your benefits plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Understands your business needs. Meets with you to establish needs and service expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Understands your service expectations. Develops a business plan that incorporates the agreed upon needs and expectations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Displays knowledge regarding dental benefit products and services	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Clearly explains your report results	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Average Rating						



**Professionalism:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
6. Actively listens to and acknowledges your issues and concerns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Provides appropriate verbal communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Provides appropriate written communication	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Works with you to develop a positive working relationship	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					Average Rating	

**Proactive Management:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
10. Actively monitors your account and interacts with you in a frequency that meets your needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. Communicates potential problems/issues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12. Provides viable alternative solutions that meet your business needs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13. Manages and understands system requirements and their effect on your business	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14. Sets realistic expectations regarding turn-around time	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					Average Rating	

**Accessibility:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
15. Available to you on a timely basis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
16. Allocates appropriate time when meeting with you	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
17. Demonstrates flexibility with regard to schedule changes	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18. Provides/communicates alternate contacts in the event of their absence	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
19. Advises you of schedule limitations upon contact for meetings, conference calls, projects etc.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					Average Rating	

**Responsiveness:** Indicate the extent to which you agree that your Account Management Team:

	Strongly Agree 5	4	3	2	Strongly Disagree 1	For any "1" or "2" responses, please provide specific comments in the area below
20. Responds to your inquiries in a timely manner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
21. Provides thorough responses to your inquiries	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
22. Follows-through regarding outstanding problems/issues/items	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
23. Solicits the assistance of product experts when needed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					Average Rating	
					Overall Average Rating	

**Please include any other comments or suggested action steps:**

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## APPENDIX D

#### Part V. BENEFITS AND COVERAGES

All dental procedures listed under the attached Description of Benefits and Member Copayments will be provided if, in the opinion of the Participating Dentist, they are necessary for the patient's dental health. The fee charged will be the fee listed under Member Copayments for each procedure completed. Only the Participating Dentist shall have the right to examine and to determine the professional services to be performed pursuant to the Plan. If conflict arises regarding the quality, cost, or extent of work, the case in question will be resolved pursuant to the Complaint or Quality Assurance Procedures established by the Plan.

#### Part VI. DENTAL RECORDS

The dental records of all Members concerning services performed hereunder shall remain the property of the Participating Dentist or Plan Specialist. Information related to the number, cost, and delivery of services provided under the Plan to Members may be made available to the Plan by Participating Dentists or Plan Specialists for purposes of review, investigation, or evaluation of care.

#### Part VII. CHANGE IN SERVICE

Plan reserves the right to change the Subscription Dues or Member Copayments after completion of the term of the Contract. No change will be made without giving the Group forty-five (45) days prior written notice.

#### Part VIII. CONVERSION OF COVERAGE

Plan coverage will terminate for Group Subscribers and their Dependents when Subscriber is no longer associated with the Group. Thereafter, Subscriber may convert by enrolling in the Plan on an individual basis (Subject to Part III-A and B only). In such case, payment shall be on either a monthly or annual basis.

#### Part IX. EMERGENCY SERVICES

When a Member is more than 50 miles from their Participating Dentist, they may have emergency services rendered by any licensed dentist. Emergency services is defined as "palliative care of injury, toothache, or accident requiring the immediate attention of a dentist which occurs under circumstances where it is impractical for Members to present themselves to their designated Participating Dentist for care." Plan reimburses for emergency out-of-area services up to \$100 per incident. Services are limited to those procedures not excluded under Plan Limitations and Exclusions. Plan must be notified of such treatment within five (5) days of the Member's return to their area. Proof of loss must be submitted to Plan within thirty (30) days of treatment. Proof of loss should be mailed to: Dominion Dental Services, Inc., 115 South Union Street, Suite 300, Alexandria, Virginia 22314, ATTN: Accounting Dept.

When a Member has a dental emergency within the service area, but is unable to make arrangements to receive care through their Participating Dentist, treatment must be pre-authorized by contacting Plan Member Services at (888) 518-5338.

#### Part X. INCONTESTABILITY CLAUSE

In the absence of fraud, all statements made by a Subscriber shall be considered representations and not warranties and no statement shall be the basis for voiding coverage or denying a claim after the Contract has been in force for two years from its effective date, unless the statement was material to the risk and was contained in a written application.

#### Part XI. HOW TO RECEIVE BENEFITS

In order to make an appointment, Members must contact their selected dental office. The first appointment scheduled will usually be for the purpose of taking a complete set of full mouth x-rays, an examination, developing a treatment plan, and providing an estimate of the cost of needed work. Members must pay the fees listed for each covered procedure performed on the Description of Benefits and Member Copayments. These fees are paid directly to the Participating Dentist who renders treatment. In the event the Participating General Dentist determines specialty care is necessary, the Participating General Dentist will provide a referral to a Plan Specialist (if available).

#### Part XII. COMPLAINTS AND GRIEVANCES

Complaints involving patient care should initially be brought to the attention of the Member's Participating Dentist. If the issue is not resolved to the Member's satisfaction, or if the Member has grievances or questions regarding issues other than patient care, they may contact Member Services at Dominion Dental Services, Inc., 115 South Union Street, Suite 300, Alexandria, VA 22314, (888) 518-5338 or (703) 518-5338. It is recommended that all Members familiarize themselves with the Complaint Procedures, and make use of it before taking any other action.

#### Part XIII. ENTIRE CONTRACT

The Group Dental Service Contract, executed on behalf of Subscribers, and this Certificate of Coverage (including any attachments thereto) constitute the entire Contract between the parties. No portion of the charter, bylaws, or other corporate documents of Dominion Dental Services, Inc. will constitute part of the Contract. No change in this Contract shall be valid until approved by an executive officer of the Plan and unless such approval is endorsed hereon or attached hereto. No agent has authority to change this Contract or to waive any of its provisions.

#### ATTACHMENTS

Description of Benefits and Member Copayments  
Membership Identification Card  
Notice of Privacy Practices



Managed Dental Care Programs

# Group Certificate of Coverage Select Plan

Dominion Dental Services, Inc.  
115 S. Union Street  
Suite 300  
Alexandria • Virginia • 22314  
(703) 518-5338  
Toll Free (888) 518-5338

**Dominion Dental Services, Inc.** (hereinafter referred to as "Plan") certifies that the Subscriber is covered under and subject to all the provisions, definitions, limitations and conditions of this Certificate for the benefits approved herein, and is eligible for benefits stated in the attachments hereto (Description of Benefits and Member Copayments) as of the date indicated in the letter accompanying the Membership Identification Card.

The address of the principal administrative office of Plan is: Dominion Dental Services, Inc., 115 South Union Street, Suite 300, Alexandria, Virginia 22314. The telephone number is (703) 518-5000.

#### **Part I. DEFINITIONS**

- A. **Dependent** shall mean lawful spouse of Subscriber and/or unmarried natural, step or adopted children, or children under the Subscriber's legal guardianship, from and after birth up to his/her 20th birthday. At the Group's request, Dependent coverage may include a Domestic Partner of Subscriber and/or children of a Domestic Partner. When a child has been placed with a Subscriber for the purpose of adoption, that child is eligible for Dependent coverage from the date of such adoptive or parental placement. However, application for coverage must be submitted within 31 days from date of eligibility, along with proof that the adoption is pending. If a newborn infant is placed for adoption with Subscriber within 31 days of birth, such child shall be considered a newborn child of the Subscriber to the same extent as if that child had been a newborn natural child of the Subscriber. An unmarried child who is 20 years, but less than 23, whose time is principally devoted to attending school, and who is dependent upon his parents for primary support, is eligible to be covered as a Dependent. If a Dependent child is enrolled as a full-time student and is unable due to medical condition to continue as a full-time student, coverage for such child shall continue in force for a period of 12 months from the date the child ceases to be a full-time student, or until such child attains age 23, whichever first occurs. The child's treating physician must certify at the time the child withdraws as a full-time student that the child's absence is medically necessary. Upon the attainment of limiting age, coverage as a Dependent shall be extended if the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental or physical incapacity and (2) chiefly dependent upon the Subscriber for support and maintenance, provided proof of such incapacity and dependency is furnished to Plan by Subscriber within 31 days of the child's attainment of limiting age and subsequently as may be required by the Plan, but not more than annually after the two-year period following the child's attainment of limiting age.
- B. **Domestic Partner** shall mean a person who is at least 18 years old, is not related to Subscriber by blood or marriage within four degrees of consanguinity under civil law rule, is not married or in a civil union or

domestic partnership with another individual, has been financially interdependent with Subscriber for at least 6 consecutive months prior to enrollment in Plan in which each individual contributes to some extent to the other individual's maintenance and support with the intention of remaining in the relationship indefinitely, and shares a primary residence with Subscriber. In order to obtain coverage for a Domestic Partner, Subscriber must sign an Affidavit of Domestic Partnership form provided by the Plan.

C. **Group** shall mean the organization or employing unit with which the Subscriber is associated and which has executed the Group Dental Service Contract.

D. **Member** shall mean any individual Subscriber or eligible family Dependent entitled to receive services by reason of the Contract.

E. **Participating Dentist** shall mean those independent licensed dentists who have contracted with the Plan to provide dental services for Members of the Plan. Participating Dentists are not employees of, nor supervised by the Plan.

F. **Plan Specialist** shall mean those independent licensed specialists who have contracted with the Plan to provide dental services for Members of the Plan that are of such a degree of complexity as not to be normally performed by a Participating Dentist. Plan Specialists are not employees of, nor supervised by the Plan.

G. **Subscriber** shall mean an individual in good standing who has paid the Subscription Dues for services of the Plan prior to the period of eligibility, including payments for Dependents as hereinafter defined.

H. **Subscription Dues** shall mean amounts payable on a regular prepayment basis by or for the Subscriber to the Plan.

I. **Usual and Customary Fees** shall mean those fees that the Participating Dentist usually charges its patients for dental services when a person is not affiliated with any dental program.

#### **Part II. EFFECTIVE DATE OF BENEFITS**

A. All persons, who have enrolled in the Plan and paid the appropriate Subscription Dues on or before the 17th day of the month, shall be eligible for benefits commencing on the 1st day of the following month or on any date mutually agreed upon by Plan and Group.

B. All persons who have enrolled in the Plan and paid the appropriate Subscription Dues between the 17th day of the month and the last day of the month shall be eligible for benefits commencing on the 1st day of the second month or on any date mutually agreed upon by Plan and Group.

C. All Subscribers and enrolled Dependents become eligible for services on the effective date indicated in the letter accompanying their Membership Identification Card.

#### **Part III. TERMINATION OR CANCELLATION**

Benefits shall cease upon the earliest of the following events:

A. On the date of expiration of the period for which the last payment of Subscription Dues was made to Plan. If payment is not made

in full by the Group on or prior to the date due, as specified in Part IV-A, a grace period of 31 days from the last date of coverage shall be granted to the Group after the first payment. If payment is not received within the 31 days, coverage may be cancelled after the 31<sup>st</sup> day and the Group may be held liable for the payment of the Subscription Dues for the period of time coverage remained in effect during the grace period. The Contract shall remain in full force and effect during the grace period.

B. Upon the date of Dependents attaining the age of 20 years or marriage prior to that date (Subject to Part I-A).

C. If after reasonable efforts to establish and maintain a satisfactory dentist-patient relationship, the Participating Dentist is unable to do so, the Plan reserves the right to transfer the Subscriber and Dependents to a second and then third Participating Dentist of their choice. If the third Participating Dentist is also unable to establish a satisfactory dentist-patient relationship, the Plan reserves the right to terminate the membership of said Subscriber and Dependents. Termination shall be effective on the last day of the month after 31 days of which termination notice occurs. In case of termination by the Plan, and if services have been rendered, no refund will be given to Subscriber.

D. Upon violation of the terms of this Contract, fraud or deception in the use of services, or termination of the Group Contract under which the Member is covered, Coverage will be canceled after the 31<sup>st</sup> day after written notice is mailed to the Subscriber.

Group coverage will renew for one (1) year periods in the absence of written termination notification by Group at least thirty (30) days in advance of expiration of the term of the Contract.

Subject to Part III, A through D, if a Subscriber is paying 100% of the cost of the Plan, without Group contribution, Subscriber must remain in the Plan a minimum of 12 months. Less than 12 month participation may result in Subscriber being responsible for the Usual and Customary Fees for services received, reduced by the sum of the Subscription Dues and copayments paid.

#### **Part IV. SUBSCRIPTION DUES AND MEMBER COPAYMENTS**

A. All Subscription Dues are payable on or before the 17th day of the month preceding the month in which services may be rendered. Member Copayments (as listed in the attached Description of Benefits and Member Copayments) are payable to the Participating Dentist at the time services are rendered.

B. Subscription Dues must be received in the administrative office of the Plan no later than the 17th day of the month before eligibility is desired. If Electronic Funds Transfers is not utilized, payments should be mailed to: Dominion Dental Services, Inc., P.O. Box 75314, Charlotte, NC 28275-5314.

## APPENDIX E

## Business Associate Agreement

This Business Associate Agreement ("BA Agreement") is undertaken pursuant to the parties' performance of a certain contract ("Contract") dated as of June 17, 2011 by and between the State of Delaware by and through the State Employee Benefits Committee ("Plan Sponsor"), on its own behalf and on behalf of the group health plan it sponsors for employees or other covered persons (the "Plan"), and Dominion Dental Services, Inc. ("Contractor").

In the performance of services on behalf of the Plan pursuant to the Contract, and in order for Contractor to use, disclose or create certain information pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below), Contractor may be, under applicable law, a Business Associate of the Plan as that term is defined by the Health Insurance Portability and Accountability Act of 1996, including the modifications required under the American Recovery and Reinvestment Act of 2009 ("ARRA"), and its implementing Administrative Simplification regulations (45 C.F.R. §§142, 160, 162 and 164) ("HIPAA"). Accordingly, Contractor, the Plan and Plan Sponsor mutually agree to modify the Contract to incorporate the terms of this BA Agreement to comply with the requirements of HIPAA, and to include additional provisions that Plan Sponsor, the Plan and Contractor desire to have as part of the Contract.

Therefore, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

### I. DEFINITIONS

- A. **Covered Entity.** "Covered Entity" shall mean the Plan.
- B. **Individual.** "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- C. **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- D. **Secretary.** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- E. **Protected Health Information.** "Protected Health Information" or "PHI" shall mean individually identifiable information created or received by a health care provider, health plan, employer or health care clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to the individual, or the past, present or future payment for provision of health care to the individual; (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. "PHI" shall be limited to the information created or received by Contractor from or on behalf of Covered Entity.
- F. **Standard Transactions.** "Standard Transaction(s)" shall mean a transaction that complies with the standards set forth at 45 C.F.R. §162.



- G. Designated Record Set.** "Designated Record Set" shall have the meaning given to such term in 45 C.F.R. §164.501.
- H. Covered Person.** "Covered Person" means the Covered Employee and the Covered Employee's legal spouse and/or unmarried dependent children as specified in the Plan or elsewhere in the Contract as Employee or Insured.
- I. Summary Health Information.** "Summary Health Information" means information, which may be PHI, (1) that summarizes the claims history, claims expenses, or types of claims experienced by Covered Persons for whom a Plan Sponsor has provided health care benefits under the Plan, and (2) from which the identifiers specified in 45 CFR §164.514(b)(2)(i) have been deleted (except that the zip code information described in 45 CFR §164.514(b)(2)(i)(B) may be aggregated to the level of a five (5) digit zip code).
- J. Electronic PHI.** "Electronic PHI" shall mean PHI that is subject to the Security Rule, limited to such information created, received, maintained, or transmitted electronically.
- K. Security Incident.** "Security Incident" shall have the same meaning as "security incident" in 45 CFR 164.304, limited to any such incident involving Electronic PHI.
- L. Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic PHI at 45 CFR §§160, 162 and 164.
- M. Breach.** "Breach" shall mean an unauthorized acquisition, use or disclosure of protected health information (PHI) which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. For purposes of this definition, "compromises the security or privacy of such information" means poses a significant risk of financial, reputational or other harm to individual.
- N. Secured PHI.** "Secured PHI" shall mean PHI when it is rendered unusable, unreadable, or indecipherable. Methodologies that render PHI secure are as follows:
- Encryption of electronic data per National Institute Standards and Technology guidelines
  - Destruction of electronic media as per NIST Standards
  - Destruction or shredding of paper, film or other hard copy media
- O. Unsecured PHI.** "Unsecured PHI" is "unsecure" when it is not rendered unusable, unreadable or indecipherable to authorized individuals through the use of a technology or methodology specified by the Department of Health and Human Services.
- P.** All other capitalized terms used in this BA Agreement shall have the meanings set forth in the applicable definitions under the HIPAA Privacy/Security Rule or the Standards for Electronic Transactions.

## **II. PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

- A.** During the continuance of the Contract, Contractor will perform services necessary in connection with the Plan as outlined in the Contract. These services may include Payment activities, Health Care Operations, and Data Aggregation as these terms are defined in 45 CFR §164.501. In connection with the services to be performed pursuant to the Contract, Contractor is permitted or

required to use or disclose PHI it creates or receives for or from the Plan or to request PHI on the Plan's behalf as provided below.

**B. Functions and Activities on the Plan's Behalf.** Unless otherwise limited in this BA Agreement, Contractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Plan as specified in the Contract. Contractor may decide in its own reasonable discretion what uses and disclosures of PHI are required for it to perform administrative services for the Plan as outlined in this BA Agreement and in the Contract as well as in accordance with the law.

1. Use for Contractor's Operations. Contractor may use PHI it creates or receives for or from the Plan for Contractor's proper management and administration or to carry out Contractor's legal responsibilities in connection with services to be provided under the Contract.
2. Disclosures for Contractor's Operations. Contractor may disclose the minimum necessary of such PHI for Contractor's proper management and administration or to carry out Contractor's legal responsibilities, but only if the following conditions are met:
  - a. The disclosure is required by law; or
  - b. Contractor obtains reasonable assurance, evidenced by written contract, from any person or organization to which Contractor will disclose such PHI that the person or organization will:
    - i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person or organization or as required by law; and
    - ii) Promptly notify Contractor (who will in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached.
3. Minimum Necessary Standard. In performing functions and activities in connection with the Contract, Contractor agrees to make reasonable efforts to use, disclose or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure or request.

**C. Data Aggregation Services.** The Plan agrees and recognizes that Contractor performs Data Aggregation services for the Plan, as defined by the HIPAA Privacy Rule. In the course of performing normal and customary services under the Contract, this data aggregation is an essential part of Contractor's work on behalf of the Plan under the Contract. Accordingly, Contractor can perform these data aggregation services in its own discretion, subject to any limitations imposed by the Contract. The term "Data Aggregation" is defined under the HIPAA Privacy Rule to mean, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a covered entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

**D. Prohibition on Unauthorized Use or Disclosure**

1. Non-permitted Use and Disclosure of PHI. Contractor will neither use nor disclose PHI it creates or receives for or from the Plan or from another Business Associate of the Plan, except as permitted or required by the Contract and this BA Agreement, as required by law, as otherwise permitted in writing by the Plan, as authorized by a Covered Person.

2. Disclosure to the Plan and the Plan Business Associates. To the extent permitted or required by the Contract and this BA Agreement, Contractor will disclose PHI to other Business Associates of the Plan which the Plan has identified in a writing provided to Contractor. Contractor shall only disclose such PHI to such Business Associates, in their capacity as Business Associates of the Plan. Other than disclosures permitted by this Section II or as otherwise specifically identified in the Contract, Contractor will not disclose Covered Persons' PHI to the Plan or to a Business Associate of the Plan except as directed by the Plan in writing.
3. No Disclosure to Plan Sponsor. Contractor will not disclose any Covered Persons' PHI to Plan Sponsor, except as permitted by and in accordance with Section VIII or as otherwise specifically identified in the Contract.

### **III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR**

- A. Contractor will develop, document, implement, maintain and use appropriate administrative, technical and physical safeguards to preserve the integrity and confidentiality of, and to prevent non-permitted use or disclosure of, PHI created or received for or from the Plan.
- B. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of this BA Agreement.
- C. Contractor agrees to report to Covered Entity, without unreasonable delay and in any event within 60 days, any use or disclosure of the PHI not provided for by this BA Agreement or otherwise in writing by the Plan. Contractor shall maintain a written log recording the date, name of Covered Person and description of PHI for all such unauthorized use or disclosure and shall submit such log to the Plan Sponsor semiannually and by request.
- D. Contractor will require that any agent, including a subcontractor, to whom it provides PHI as permitted by this BA Agreement (or as otherwise permitted with the Plan's prior written approval), agrees to the same restrictions and conditions that apply through this BA Agreement to Contractor with respect to such information.
- E. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- F. Contractor agrees to implement administrative, physical, and technical safeguards (as set forth in the Security Rule) that reasonably and appropriately protect the confidentiality and integrity (as set forth in the Security Rule), and the availability of Electronic PHI, if any, that Contractor creates, receives, maintains, or transmits electronically on behalf of Covered Entity. Contractor agrees to establish and maintain security measures sufficient to meet the safe harbor requirements established pursuant to ARRA by making data unreadable, indecipherable, and unusable upon receipt by an unauthorized person. Contractor agrees to provide adequate training to its staff concerning HIPAA and Contractor's responsibilities under HIPAA.

- G. Contractor agrees to report to Covered Entity any Security Incident of which Contractor becomes aware.
- H. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic PHI, agrees to implement reasonable and appropriate safeguards to protect such information.
- I. Contractor agrees to directly provide notice to any effected participants in the event of a Breach and to send a written log each such Breach and notice to participants to the covered entity within 30 days of notification. Contractor agrees to notify participants in accordance with the guidelines and standards set forth by the Department of Health and Human Services under the American Reinvestment & Recovery Act and the HITECH Act.

#### IV. INDIVIDUAL RIGHTS OBLIGATIONS

- A. **Access.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will provide access to PHI as required by 45 CFR §164.524 on the Plan's behalf. Contractor will provide such access according to its own procedures for such access. Contractor represents that its procedures for such access comply with the requirements of 45 CFR §164.524. Such provision of access will not relieve the Plan of any additional and independent obligations to provide access where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will make available for inspection and obtaining copies by the Plan, or at the Plan's direction by the Covered Person (or the Covered Person's personal representative), any PHI about the Covered Person created or received for or from the Plan in Contractor's custody or control contained in a Designated Record Set, so that the Plan may meet its access obligations under 45 CFR §164.524. All fees related to this access, as determined by Contractor, shall be borne by Covered Persons seeking access to PHI.
- B. **Amendment.** Contractor and the Plan agree that, wherever feasible, and to the extent that responsive information is in the possession of Contractor, Contractor will amend PHI as required by 45 CFR §164.526 on the Plan's behalf. Contractor will amend such PHI according to its own procedures for such amendment. Contractor represents that its procedures for such amendment comply with the requirements of 45 CFR §164.526. Such amendment will not relieve the Plan of any additional and independent obligations to amend PHI where requested by an individual. Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will amend such PHI contained in a Designated Record Set, in accordance with the requirements of 45 CFR §164.526. Upon receipt of written or electronic notice from the Plan, Contractor will amend or permit the Plan access to amend any portion of the PHI created or received for or from the Plan in Contractor's custody or control, so that the Plan may meet its amendment obligations under 45 CFR §164.526.
- C. **Disclosure Accounting.** So that the Plan may meet its disclosure accounting obligations under 45 CFR §164.528, Contractor and the Plan agree that, wherever feasible and to the extent that disclosures have been made by Contractor, Contractor will provide the accounting that is required under 45 CFR §164.528 on the Plan's behalf. Contractor will provide such accounting according to its own procedures for such accounting. Contractor represents that its procedures for such accounting comply with the requirements of 45 CFR §164.528. Such provision of disclosure accounting will not relieve the Plan of any additional and independent obligations to provide disclosure accounting where requested by an individual. Accordingly, upon the Plan's written or

electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will provide an accounting as set forth below.

1. Disclosure Tracking

Starting as of the Effective Date of the Contract, Contractor will record each disclosure of Covered Persons' PHI, which is not exempted from disclosure accounting that Contractor makes to the Plan or to a third party.

The information about each disclosure that Contractor must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Contractor made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure.

For repetitive disclosures of Covered Persons' PHI that Contractor makes for a single purpose to the same person or entity (including the Plan), Contractor may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

2. Exceptions from Disclosure Tracking

Contractor is not required to record disclosure information or otherwise account for disclosures of PHI that this BA Agreement or the Plan in writing permits or requires: (i) for the purpose of the Plan's payment activities or health care operations, (ii) to the individual who is the subject of the PHI disclosed, or to that individual's personal representative; (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented; (x) for disclosures prior to April 14, 2003; or (xi) as otherwise excepted under 45 CFR §164.528.

3. Disclosure Tracking Time Periods

Contractor will have available for the Plan or for Covered Persons the Disclosure Information required for the six (6) years immediately preceding the date of the Plan's request for the Disclosure Information (except Contractor will not be required to have Disclosure Information for disclosures occurring before April 14, 2003).

**D. Right to Request Restrictions and Confidential Communications**

So that the Plan may meet its obligations to evaluate requests for restrictions and confidential communications in connection with the disclosure of PHI under 45 CFR §164.522, Contractor and the Plan agree that, wherever feasible and to the extent that communications are within the control of Contractor, Contractor will perform these evaluations on behalf of the Plan. Contractor will evaluate such requests according to its own procedures for such requests, and shall implement such appropriate operational steps as are required by its own procedures. Contractor represents that its procedures for evaluating such requests comply with the requirements of 45 CFR §164.522. Such evaluation will not relieve the Plan of any additional and independent obligations to evaluate restrictions or implement confidential communications where requested by an individual.

Accordingly, upon the Plan's written or electronic request or the direct request of a Covered Person or the Covered Person's Personal Representative, Contractor will evaluate requests for restrictions and requests for confidential communications, and will respond to these requests as appropriate under Contractor's procedures.

## **V. OBLIGATIONS OF THE COVERED ENTITY**

- A.** Covered Entity shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Contractor's permitted or required uses and disclosures.
- B.** Covered Entity shall notify Contractor of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.
- C.** Covered Entity shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity except as provided in this BA Agreement. In no event shall Covered Entity request Contractor to disclose to Covered Entity or agents of Covered Entity any PHI unless such disclosure is the minimum necessary disclosure that satisfies the request and that such disclosure is solely for the purpose of treatment, payment or plan operations.

## **VI. BREACH OF PRIVACY OBLIGATIONS**

Without limiting the rights of the parties under the Contract, the Plan will have the right to terminate the Contract if Contractor has engaged in a pattern of activity or practice that constitutes a material breach or violation of Contractor's obligations regarding PHI under this BA Agreement and, on notice of such material breach or violation from the Plan, fails to take reasonable steps to cure the breach or end the violation.

If Contractor fails to cure the material breach or end the violation after the Plan's notice, the Plan may terminate the Contract by providing Contractor written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 60 days from this termination notice.

### **A. Effect of Termination.**

#### **1. Return or Destruction upon Contract End**

Upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will if feasible return to the Plan or destroy all PHI, in whatever form or medium (including in any electronic medium under Contractor's custody or control), that Contractor created or received for or from the Plan, including all copies of such PHI that allow identification of any Covered Person who is a subject of the PHI. Contractor will complete such return or destruction as promptly as practical after the effective date of the cancellation, termination, expiration or other conclusion of the Contract.

Following notice and good faith negotiation between Contractor and Plan Sponsor as to the reasonable costs, Plan Sponsor will reimburse Contractor's reasonable cost incurred in returning

or destroying such PHI subject to the requisite appropriation by the Delaware General Assembly as required by Title 29 Delaware Code Chapter 65 and Article 8, Section III of the Delaware Constitution.

2. Disposition When Return or Destruction Not Feasible

The Plan recognizes that in many situations, particularly those involving data aggregation services performed by Contractor for the Plan and others, that it will be infeasible for Contractor to return or destroy PHI. Accordingly, where in Contractor's discretion such return or destruction is infeasible, for any such PHI, upon cancellation, termination, expiration or other conclusion of the Contract, Contractor will limit its further use or disclosure of the PHI to those purposes that make their return to the Plan or destruction infeasible.

**VII. PLAN SPONSOR'S PERFORMANCE OF PLAN ADMINISTRATION FUNCTIONS**

- A. **Communication of PHI.** Except as specifically agreed upon by Contractor, the Plan and Plan Sponsor, and in compliance with any requirements imposed by this Section VIII, all disclosures of PHI from Contractor pursuant to the Contract shall be made to the Plan, except for disclosures related to enrollment or disenrollment in the Plan.
- B. **Summary Health Information.** Upon Plan Sponsor's written request for the purpose either to, (a) obtain premium bids for providing health insurance coverage for the Plan, or (b) modify, amend or terminate the Plan, Contractor is authorized to provide Summary Health Information regarding the Covered Persons in the Plan to Plan Sponsor.
- C. **Plan Sponsor Representation.** Plan Sponsor represents and warrants (A) that the Plan has been established and is maintained pursuant to law, (B) that the Plan provides for the allocation and delegation of responsibilities for the Plan, including the responsibilities assigned to Contractor under the Contract, (C) that the Plan includes or incorporates by reference the appropriate terms of the Contract and this BA Agreement, and (D) that the Plan incorporates the provisions required by 45 CFR §164.504.
- D. **Plan Sponsor's Certification.** Contractor will not disclose Covered Persons' PHI to Plan Sponsor, unless and until the Plan authorizes Contractor in writing to disclose the minimum necessary Covered Persons' PHI to Plan Sponsor for the plan administration functions to be performed by Plan Sponsor as specified in the Plan.
- E. **Contractor Reliance.** Contractor may rely on Plan Sponsor's certification and the Plan's written authorization, and will have no obligation to verify that the Plan complies with the requirements of 45 CFR §164.504 or this BA Agreement or that Plan Sponsor is complying with the Plan.
- F. **The Plan Amendment.** Before the Plan will furnish Plan Sponsor's certification described above to Contractor, the Plan will ensure (1) that its Plan establishes the uses and disclosures of Covered Persons' PHI consistent with the requirements of 45 CFR §164 that Plan Sponsor will be permitted and required to make for the plan administration functions Plan Sponsor will perform for the Plan, and (2) that Plan Sponsor agrees to all the applicable conditions imposed by §164.504 on the use or disclosure of PHI.

## **VIII. MISCELLANEOUS**

- A. Regulatory References.** A reference in this BA Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- B. Survival.** The respective rights and obligations of Contractor under Section IV of this BA Agreement shall survive the termination of this BA Agreement.
- C. Interpretation.** Any ambiguity in this BA Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule. Except to the extent specified by this BA Agreement, all of the terms and conditions of the Contract shall be and remain in full force and effect. In the event of any inconsistency or conflict between this BA Agreement and the Contract, the terms and provisions and conditions of this BA Agreement shall govern and control. Nothing express or implied in this BA Agreement and/or in the Contract is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever. This BA Agreement shall be governed by and construed in accordance with the same internal laws that are applicable to the Contract.
- D. Duration.** This BA Agreement will continue in full force and effect for as long as the Contract remains in full force and effect. This BA Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the Contract.
- E. Term.** The Term of this BA Agreement shall be effective as of the date appearing on the signature page, and shall terminate when all of the PHI provided by Covered Entity to Contractor, or created or received by Contractor on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions of this BA Agreement.
- F. Amendment.** Upon the effective date of any final regulation or amendment to final regulations with respect to PHI, Standard Transactions, the security of health information or other aspects of HIPAA applicable to this BA Agreement or to the Contract, this BA Agreement will automatically amend such that the obligations imposed on Plan Sponsor, the Plan and Contractor remain in compliance with such regulations, unless (1) Contractor elects to terminate the Contract by providing Plan Sponsor and the Plan notice of termination in accordance with the Contract at least thirty (30) days before the effective date of such final regulation or amendment to final regulations; or (2) Contractor notifies the Plan of its objections to any such amendment. In the event of such an objection, the parties will negotiate in good faith in connection with such changes or amendment to the relevant final regulation.
- G. Conflicts.** The provisions of this BA Agreement will override and control any conflicting provision of the Contract. All nonconflicting provisions of the Contract will remain in full force and effect.
- H. Independent Relationship.** None of the provisions of this BA Agreement are intended to create, nor will they be deemed to create any relationship between the parties other than that of independent parties contracting with each other as independent parties solely for the purposes of effecting the provisions of this BA Agreement and the Contract.



- I. **Rights of Third Parties.** This BA Agreement is between Contractor and the Plan and the Plan Sponsor and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party or parties.
- J. **Notices.** All notices and notifications under this BA Agreement shall be sent in writing by traceable carrier to the listed persons on behalf of Contractor, the Plan and Plan Sponsor at the addresses indicated on the signature page hereof, or such other address as a party may indicate by at least ten (10) days' prior written notice to the other parties. Notices will be effective upon receipt.
- K. **Expenses.** Unless otherwise stated in this BA Agreement or the Contract, each party shall bear its own costs and expenses related to compliance with the above provisions. Any additional expenses incurred by Contractor in connection with services to be provided pursuant to this BA Agreement shall be included in the Contract.
- L. **Documentation.** All documentation that is required by this BA Agreement or by the HIPAA Privacy Rule must be retained by Contractor for six years from the date of creation or when it was last in effect, whichever is longer.

AGREED By and between the undersigned Parties this 17 day of June 2011.

**For State of Delaware:**

**For Contractor:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Director, Statewide Benefits

Title: PRESIDENT

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

**Address for Notices:**

Statewide Benefits Office, OMB  
Attention: Brenda Lakeman, Director  
500 W. Loockerman Street, Suite 320  
Dover, DE 19904

**Address for Notices:**

DOMINION DENTAL SERVICES, INC.  
115 S. UNION STREET, SUITE 800  
ALEXANDRIA, VA 22314

## APPENDIX F

Master Report Schedule Dominion Dental Program  
FY12 (July 1, 2011 to June 30, 2012)

APPENDIX F

File Description	Direction	Frequency	Transport Method	Sending Contact	Receiving Contact	Target Date
Electronic enrollment file	PHRST to Dominion	Weekly	State secure website (SFTP server)	PHRST	Linda Tran	Every Saturday End of 2nd pay period of each month
Payroll file*	PHRST to SBO (Fran Nichols)	Monthly	State secure website (SFTP server)	Fran Nichols	Linda Tran	
Reconciliation	Dominion to Fran Nichols	Monthly	State secure website (SFTP server)	Linda Tran	Fran Nichols (upon completion submits results to Linda Tran within 30 days)	10th business day
Age 26 - "Aging Out"	Dominion to SBO (Larry Frank)	Monthly	State secure website (SFTP server)	Wayne Kee	Fran Nichols	Last day of month** 5 business days after month end
Group eligibility report	Dominion to SBO (Larry Frank)	Monthly	Email	Wayne Kee	Larry Frank	45 days after end of quarter
Utilization/Capitation	Dominion to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Wayne Kee	Larry Frank	45 days after end of quarter
Delivery of all tangible (ID cards/certificates)	Dominion to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Wayne Kee	Larry Frank	45 days after end of quarter
Telephone Response Time	Dominion to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Wayne Kee	Larry Frank	45 days after end of quarter
Eligibility/Transfer Accuracy	Dominion to SBO (Larry Frank)	Quarterly	Email (hard copy at face to face meetings)	Wayne Kee	Larry Frank	45 days after end of quarter

\* Used primarily for invoicing purposes: Non payroll groups pay their own directly.

\*\* Last day of the month two months preceding the month the dependent turns 26. (For example, age out in December = notified on Oct 31's report.)

## APPENDIX G

## **Delaware Complaint Procedures**

**Step 1** If a member has discussed a grievance/inquiry relating to dental care with a participating DOMINION dentist and is not satisfied with the resolution (or if the dentist is not available to receive the grievance/inquiry), the member may refer the grievance/inquiry to a DOMINION Member Service Representative by calling toll-free 1-888-518-5338. The grievance/inquiry will be investigated and the result of the investigation will be verbally communicated to the member within fifteen (15) working days after receipt of the grievance/inquiry.

**Step 2** If a grievance cannot be resolved in Step 1, a member or participating provider may submit a letter of complaint to the Member Services Department, c/o Dominion Dental Services, Inc., 115 S. Union Street, Suite 300, Alexandria, VA 22314 or fax (703) 518-4450. The Member Services Department will acknowledge receipt of the complaint to the member or provider in writing within fifteen (15) working days. The Member Services Department will then conduct a review of the complaint and initiate any correspondence necessary to resolve it.

If the matter involves significant health services, quality or ethical aspects, the matter will be referred to the Vice President of Professional Services. The Vice President of Professional Services will consult with parties involved and may contact members of the Quality Assurance Committee to review findings.

The aggrieved party will receive a report of the findings within sixty (60) working days of receipt of the complaint. If additional time is needed to resolve the issue the member will be notified in writing. Complaints will be categorized by type or subject matter and presented to the Quality Assurance Committee.

When corresponding with DOMINION regarding a complaint, members must indicate their name, address and phone number, as well as the group number listed on their I.D. card.